

ARKANSAS CODE OF 1987 ANNOTATED



2019 SUPPLEMENT VOLUME 2B

Place in pocket of bound volume

Prepared by the Editorial Staff of the Publisher

Under the Direction and Supervision of the
ARKANSAS CODE REVISION COMMISSION

Speaker Matthew J. Shepherd, *Chair*

Representative Jimmy Gazaway

Senator Bob Ballinger

Senator Will Bond

Honorable Bettina E. Brownstein

Honorable Haley Heath

Honorable Candice Settle

Honorable Margaret Sova McCabe, *Dean, University of Arkansas at
Fayetteville School of Law*

Honorable Theresa Beiner, *Dean, University of Arkansas at
Little Rock William H. Bowen School of Law*

Honorable Cory Cox, *Legislative Director, Office of
the Attorney General*

Honorable Matthew B. Miller, *Assistant Director for Legal Services of
the Bureau of Legislative Research*



LexisNexis®

COPYRIGHT © 2017, 2019

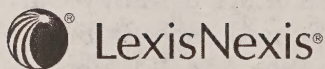
BY

THE STATE OF ARKANSAS

All Rights Reserved

LexisNexis and the Knowledge Burst logo are registered trademarks, and Michie is a trademark of Reed Elsevier Properties Inc. used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

*For information about this Supplement, see the
Supplement pamphlet for Volume 1A
ISBN 978-0-327-10031-7 (Code set)
ISBN 978-1-5221-0616-6 (Volume 2B)*



Matthew Bender & Company, Inc.

701 East Water Street, Charlottesville, VA 22902

www.lexisnexis.com

TITLE 4

BUSINESS AND COMMERCIAL LAW

(CHAPTERS 1-24 IN VOLUME 2A; CHAPTERS 41-118 IN VOLUME 2C)

SUBTITLE 3. CORPORATIONS AND ASSOCIATIONS

CHAPTER.

- 25. GENERAL PROVISIONS.
- 26. BUSINESS CORPORATIONS GENERALLY.
- 27. BUSINESS CORPORATION ACT OF 1987.
- 28. NONPROFIT ORGANIZATIONS.
- 29. PROFESSIONAL CORPORATIONS.
- 30. COOPERATIVE ASSOCIATIONS.
- 32. SMALL BUSINESS ENTITY TAX PASS THROUGH ACT.
- 33. THE ARKANSAS NONPROFIT CORPORATION ACT OF 1993.
- 35. WATER AUTHORITY ACT.
- 37. UNIFORM PROTECTED SERIES ACT.
- 38 — 40. [RESERVED.]

SUBTITLE 3. CORPORATIONS AND ASSOCIATIONS

CHAPTER 25

GENERAL PROVISIONS

SECTION.

4-25-109. Corporation permitted to change its state of incorpo-

ration. [Effective May 1, 2021.]

Effective Dates. Acts 2019, No. 819, provided: "Sections 3-17 and 20-24 of this § 26(a): May 1, 2021. Effective date clause act are effective on and after May 1, 2021".

4-25-109. Corporation permitted to change its state of incorporation. [Effective May 1, 2021.]

(a)(1) Any business corporation may change its state of incorporation from this state to any other jurisdiction which authorizes this change.

(2) Any foreign corporation may change its jurisdiction of incorporation to this state from any other jurisdiction which authorizes this change.

(b)(1) This change may be made by a business corporation:

(A) Only pursuant to authorization by a majority of the voting power present, or by a larger vote as the articles may require;

(B) At an annual or special meeting of shareholders; and

(C) If the notice sets forth the consideration of this action as the purpose of the meeting.

(2)(A) There shall be filed with the Secretary of State a certificate as to the authorization by the shareholders, signed by the president or vice president and the secretary and acknowledged by the president or vice president.

(B) The certificate may be delivered to the Secretary of State for filing as of any specified date within thirty (30) days after the date of delivery.

(3) When all taxes, fees, and charges have been paid as required by law, the Secretary of State shall record the certificate in the office of the Secretary of State and issue to the corporation a certificate reciting that it has taken all action required under the laws of this state to change its state of incorporation to the other jurisdiction.

(4) The corporation shall, upon complying with the laws of the new jurisdiction, no longer be under the laws of this state.

(5) Certified copies of the certificate of incorporation or other official certificate evidencing the corporation's incorporation under the laws of the other jurisdiction shall be filed with the Secretary of State within thirty (30) days of receipt by the business corporation.

(c)(1) The change may be made by a foreign corporation by filing with the Secretary of State:

(A) A certified copy of its original or restated articles and all amendments subsequent to the latest restatement, which were filed in the other jurisdiction;

(B) The original of a certificate of good standing from the state of original jurisdiction, dated not more than thirty (30) days earlier than the date of filing in this state;

(C) An application for incorporation under this section, signed for the corporation by its president or vice president and its secretary or assistant secretary, and acknowledged by one (1) of the signing officers, setting forth the requirements of § 4-27-202;

(D)(i) A franchise tax contact sheet provided by the Department of Finance and Administration.

(ii) The Secretary of State shall send a copy of the franchise tax contact sheet required to be filed under this subdivision (c)(1)(D) to the department; and

(E) A certificate by the Secretary of State or other proper officer of the jurisdiction in which the corporation is incorporated, reciting that the corporation has taken all action required under the laws of the jurisdiction to become a corporation incorporated under the laws of this state.

(2)(A) These documents may be delivered to the Secretary of State for filing as of any specified date within thirty (30) days after the date of delivery.

(B) When all fees and charges have been paid as required by law, the Secretary of State shall record the documents in the office of the Secretary of State and issue a certificate of incorporation of the corporation under the laws of this state.

(3) The certificate of incorporation shall be conclusive evidence of the fact that the corporation has been duly incorporated under the laws of this state.

(4) Effective as of the time of filing the documents with the Secretary of State, the corporation shall be incorporated solely under the laws of this state and no longer under the laws of the other jurisdiction.

History. Acts 2001, No. 454, § 1; 2019, No. 819, § 3.

A.C.R.C. Notes. Acts 2019, No. 819, § 1, provided: "Title. This act shall be known and may be cited as the 'Arkansas Tax Reform Act of 2019'".

Acts 2019, No. 819, § 2, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) The Arkansas Tax Reform and Relief Legislative Task Force was charged with:

"(A) Examining and identifying areas of potential tax reform within the tax laws; and

"(B) Recommending legislation to the General Assembly, in part, to modernize and simplify the Arkansas tax code and ensure fairness to all taxpayers;

"(2) There are several areas of the tax code that should be amended to reform the state's tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

"(3) Any savings realized by the state through tax reforms should be dedicated to reducing the tax burden for Arkansas taxpayers.

"(b) It is the intent of the General Assembly to:

"(1) Reform Arkansas tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

"(2) Offset any revenue savings realized through tax reform with corresponding changes to reduce the tax burden for Arkansas taxpayers".

Publisher's Notes. For text of section effective until May 1, 2021, see the bound volume.

Amendments. The 2019 amendment redesignated (c)(1)(D) as (c)(1)(D)(i); substituted "Department of Finance and Administration" for "Secretary of State" in (c)(1)(D)(i); and inserted (c)(1)(D)(ii).

Effective Dates. Acts 2019, No. 819, § 26(a): May 1, 2021. Effective date clause provided: "Sections 3-17 and 20-24 of this act are effective on and after May 1, 2021".

CHAPTER 26

BUSINESS CORPORATIONS GENERALLY

SUBCHAPTER.

12. FILING AND FEES.

SUBCHAPTER 6 — CORPORATE FINANCE

4-26-610. Restrictions on transfer of shares.

CASE NOTES

Stock Transfer.

Plaintiff's argument failed that the stock transfer was void because it violated stock-transfer restrictions on the face of the certificate and in the corporate bylaws. The stock power was a valid indorsement under Arkansas securities law, plaintiff did not show why the stock power

that he had signed failed to comply with the specific corporate bylaw provisions, and, more fundamentally, the issuer of the stock was not attempting to impose a restriction and was not even a party to the case. *Ash v. First Nat'l Bank of E. Ark.*, 2019 Ark. App. 147, 573 S.W.3d 584 (2019).

SUBCHAPTER 7 — SHAREHOLDERS**4-26-715. Books and records — Examination.****CASE NOTES****ANALYSIS**

Burden of Proof.
Records Subject to Inspection.
Subsidiary Records.
Time Limit.

Burden of Proof.

This section clearly and unambiguously provides that the shareholders bear the burden of proving entitlement to inspection. *Ashley Bancstock Co. v. Meredith*, 2017 Ark. App. 598, 534 S.W.3d 762 (2017).

This section includes no language requiring a shareholder to include specific allegations of wrongdoing in order to be entitled to records. Only a proper purpose must be established. *Ashley Bancstock Co. v. Meredith*, 2017 Ark. App. 598, 534 S.W.3d 762 (2017).

Shareholders proved a proper purpose to inspect requested records where their demand letter explained that the corporation had reported significant losses and expenses that they believed were from a subsidiary sale and significant loan write-offs, and this section did not require specific allegations of wrongdoing. *Ashley Bancstock Co. v. Meredith*, 2017 Ark. App. 598, 534 S.W.3d 762 (2017).

Records Subject to Inspection.

Court of Appeals of Arkansas, Division Four, concludes that a broad definition of the term books and records of account is proper for purposes of this section. Courts tend to broadly define the term so that shareholders' rights are protected. Adopt-

ing this approach, the Court of Appeals holds liability-insurance policies are books and records of account within the meaning of the statute. Insurance policies are contracts. And contracts are business records pertinent to the operations of a corporation. *Ashley Bancstock Co. v. Meredith*, 2017 Ark. App. 598, 534 S.W.3d 762 (2017).

Subsection (b) of this section provides that a corporation is required to produce its books and records of account after a proper demand from a shareholder. The Court of Appeals of Arkansas, Division Four, interprets this provision to mean that a corporation must provide to shareholders only the books and records it possesses. *Ashley Bancstock Co. v. Meredith*, 2017 Ark. App. 598, 534 S.W.3d 762 (2017).

Subsidiary Records.

Because subsidiaries are assets of a corporation, their books and records are corporate records. By the plain language of this section, they are subject to inspection. The Court of Appeals of Arkansas, Division Four, holds that this section authorizes a shareholder to inspect records of a corporation's subsidiaries. *Ashley Bancstock Co. v. Meredith*, 2017 Ark. App. 598, 534 S.W.3d 762 (2017).

Time Limit.

This section imposes no time limit on the inspection of records. The rules of statutory construction require that a time limit cannot be assumed. *Ashley Bancstock Co. v. Meredith*, 2017 Ark. App. 598, 534 S.W.3d 762 (2017).

SUBCHAPTER 10 — CONVERSION AND MERGER**RESEARCH REFERENCES**

ALR. Determination of Whether State or Federal Law Governs Corporate Successorship When Dispute Concerns Debts

to National Government, 29 A.L.R. Fed. 3d Art. 2 (2018).

SUBCHAPTER 11 — DISSOLUTION AND LIQUIDATION

4-26-1105. Notice to creditors — Filing or barring claims.

RESEARCH REFERENCES

ALR. Preservation, After Dissolution, der Corporate Survival or Winding Up of Remedy for or Against Corporation Un- Statute, 36 A.L.R.7th Art. 4 (2018).

SUBCHAPTER 12 — FILING AND FEES

SECTION.

4-26-1202. [Repealed.]

4-26-1202. [Repealed.]

Publisher's Notes. This section, concerning fees chargeable by the Secretary of State, was repealed by Acts 2019, No. 379, § 1, effective July 24, 2019. The section was derived from Acts 1965, No. 576, § 96; 1973, No. 379, § 2; A.S.A. 1947, § 64-1001; Acts 1987, No. 1068, § 1.

CHAPTER 27

BUSINESS CORPORATION ACT OF 1987

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. INCORPORATION.
- 14. DISSOLUTION.
- 15. FOREIGN CORPORATIONS.
- 16. RECORDS AND REPORTS.

SUBCHAPTER 1 — GENERAL PROVISIONS

Part B: Filing Documents

SECTION.

4-27-120. Filing requirements. [Effective May 1, 2021.]

SECTION.

- 4-27-121. Forms. [Effective May 1, 2021.]
- 4-27-128. Certificate of existence. [Effective May 1, 2021.]

Effective Dates. Acts 2019, No. 819, § 26(a): May 1, 2021. Effective date clause provided: "Sections 3-17 and 20-24 of this act are effective on and after May 1, 2021".

PART B: FILING DOCUMENTS

4-27-120. Filing requirements. [Effective May 1, 2021.]

- (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.
- (b) This chapter must require or permit filing the document in the office of the Secretary of State.

(c) The document must contain the information required by this chapter. It may contain other information as well.

(d) The document must be typewritten or printed.

(e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) by the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(2) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain: (1) the corporate seal, (2) an attestation by the secretary or an assistant secretary, (3) an acknowledgement, verification, or proof.

(h) If the Secretary of State has prescribed a mandatory form for the document under § 4-27-121, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by one (1) exact or conformed copy, the correct filing fee, and proof of payment of any franchise tax, license fee, or penalty required by this chapter or other law.

History. Acts 1987, No. 958, § 64-103; 2019, No. 819, § 4.

A.C.R.C. Notes. Acts 2019, No. 819, § 1, provided: "Title. This act shall be known and may be cited as the 'Arkansas Tax Reform Act of 2019'".

Acts 2019, No. 819, § 2, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) The Arkansas Tax Reform and Relief Legislative Task Force was charged with:

"(A) Examining and identifying areas of potential tax reform within the tax laws; and

"(B) Recommending legislation to the General Assembly, in part, to modernize and simplify the Arkansas tax code and ensure fairness to all taxpayers;

"(2) There are several areas of the tax code that should be amended to reform the state's tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

"(3) Any savings realized by the state through tax reforms should be dedicated to reducing the tax burden for Arkansas taxpayers.

"(b) It is the intent of the General Assembly to:

"(1) Reform Arkansas tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

"(2) Offset any revenue savings realized through tax reform with corresponding changes to reduce the tax burden for Arkansas taxpayers".

Publisher's Notes. For text of section effective until May 1, 2021, see the bound volume.

Amendments. The 2019 amendment, in (i), deleted "(except as provided in §§ 4-27-503 and 4-27-1509 [repealed])" following "copy" and inserted "proof of payment of".

Effective Dates. Acts 2019, No. 819, § 26(a): May 1, 2021. Effective date clause provided: "Sections 3-17 and 20-24 of this act are effective on and after May 1, 2021".

4-27-121. Forms. [Effective May 1, 2021.]

(a) The Secretary of State may prescribe and furnish on request forms for: (1) an application for a certificate of existence, (2) a foreign corporation's application for a certificate of authority to transact business in this state, and (3) a foreign corporation's application for a certificate of withdrawal. If the Secretary of State so requires, use of these forms is mandatory.

(b) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory.

History. Acts 1987, No. 958, § 64-104; 2019, No. 819, § 5.

A.C.R.C. Notes. Acts 2019, No. 819, § 1, provided: "Title. This act shall be known and may be cited as the 'Arkansas Tax Reform Act of 2019'".

Acts 2019, No. 819, § 2, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) The Arkansas Tax Reform and Relief Legislative Task Force was charged with:

"(A) Examining and identifying areas of potential tax reform within the tax laws; and

"(B) Recommending legislation to the General Assembly, in part, to modernize and simplify the Arkansas tax code and ensure fairness to all taxpayers;

"(2) There are several areas of the tax code that should be amended to reform the state's tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

"(3) Any savings realized by the state through tax reforms should be dedicated to reducing the tax burden for Arkansas taxpayers.

"(b) It is the intent of the General Assembly to:

"(1) Reform Arkansas tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

"(2) Offset any revenue savings realized through tax reform with corresponding changes to reduce the tax burden for Arkansas taxpayers".

Publisher's Notes. For text of section effective until May 1, 2021, see the bound volume.

Amendments. The 2019 amendment, in (a), inserted "and" preceding "(3)" and deleted "and (4) the annual franchise tax report" at the end of the first sentence.

Effective Dates. Acts 2019, No. 819, § 26(a): May 1, 2021. Effective date clause provided: "Sections 3-17 and 20-24 of this act are effective on and after May 1, 2021".

4-27-128. Certificate of existence. [Effective May 1, 2021.]

(a) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(b) A certificate of existence or authorization sets forth:

(1) the domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(2) that

(i) the domestic corporation is duly incorporated under the laws of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(ii) that the foreign corporation is authorized to transact business in this state;

(3) that all fees, taxes, and penalties owed to this state have been paid, if

- (i) payment is reflected in the records of the Secretary of State and
 - (ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;
 - (4) that its most recent annual franchise tax report required by § 4-27-1622 has been delivered to the Department of Finance and Administration;
 - (5) that articles of dissolution have not been filed; and
 - (6) other facts of record in the office of the Secretary of State that may be requested by the applicant.
- (c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

History. Acts 1987, No. 958, § 64-111; 2019, No. 819, § 6.

A.C.R.C. Notes. Acts 2019, No. 819, § 1, provided: "Title. This act shall be known and may be cited as the 'Arkansas Tax Reform Act of 2019'".

Acts 2019, No. 819, § 2, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) The Arkansas Tax Reform and Relief Legislative Task Force was charged with:

"(A) Examining and identifying areas of potential tax reform within the tax laws; and

"(B) Recommending legislation to the General Assembly, in part, to modernize and simplify the Arkansas tax code and ensure fairness to all taxpayers;

"(2) There are several areas of the tax code that should be amended to reform the state's tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

"(3) Any savings realized by the state through tax reforms should be dedicated to reducing the tax burden for Arkansas taxpayers.

"(b) It is the intent of the General Assembly to:

"(1) Reform Arkansas tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

"(2) Offset any revenue savings realized through tax reform with corresponding changes to reduce the tax burden for Arkansas taxpayers".

Publisher's Notes. For text of section effective until May 1, 2021, see the bound volume.

Amendments. The 2019 amendment substituted "Department of Finance and Administration" for "Secretary of State" in (b)(4).

Effective Dates. Acts 2019, No. 819, § 26(a): May 1, 2021. Effective date clause provided: "Sections 3-17 and 20-24 of this act are effective on and after May 1, 2021".

SUBCHAPTER 2 — INCORPORATION

SECTION.

4-27-201. Incorporators.

SECTION.

4-27-202. Articles of incorporation.

Effective Dates. Acts 2019, No. 108, § 6: Feb. 13, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that a for-profit corporation could face severe adverse tax consequences for reorganizing as a nonprofit corporation that

may result in being subjected to unwarranted penalties; that existing statutes relating to the process of converting to a nonprofit entity need amending to eliminate uncertainty and to prevent irreparable harm on businesses operating in this state; and that this act is immediately

necessary to clarify state law governing conversion by a for-profit corporation to a nonprofit corporation and provide for timely administration of business procedures. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be-

come effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto”.

4-27-201. Incorporators.

(a) One (1) or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

(b) One (1) or more natural persons who are between the ages of sixteen (16) and eighteen (18) years of age shall have a person who is at least twenty-one (21) years of age or older to serve on his or her behalf as an incorporator of a corporation by executing and filing according to § 4-27-120 articles of incorporation for the corporation.

History. Acts 1987, No. 958, § 64-201; 2017, No. 992, § 1.

designated the existing language as (a) and added (b).

Amendments. The 2017 amendment

4-27-202. Articles of incorporation.

(a) The articles of incorporation must set forth:

(1) a corporate name for the corporation that satisfies the requirements of § 4-27-401;

(2) the number of shares the corporation is authorized to issue and, if such shares are to consist of one (1) class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are without par value;

(3) the information required by § 4-20-105(a);

(4) the name and address of each incorporator; and

(5) the primary purpose or purposes for which the corporation is organized, which is provided to the Secretary of State for informational purposes and shall not, unless specifically stated in the articles of incorporation, limit the broad purposes provided in § 4-27-301.

(b) The articles of incorporation may set forth:

(1) the names and addresses of the individuals who are to serve as the initial directors;

(2) provisions not inconsistent with law regarding:

(i) specific limitations on the purpose or purposes for which the corporation is organized;

(ii) managing the business and regulating the affairs of the corporation;

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders; and

(iv) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(3) a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director:

(i) for any breach of the director's duty of loyalty to the corporation or its stockholders;

(ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

(iii) under § 4-27-833 of this chapter;

(iv) for any transaction from which the director derived an improper personal benefit; or

(v) for any action, omission, transaction, or breach of a director's duty creating any third-party liability to any person or entity other than the corporation or stockholder.

No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. All references in this subsection to a director shall also be deemed to refer to a member of the governing body of a corporation which is not authorized to issue capital stock; and

(4) any provision that under this chapter is required or permitted to be set forth in the bylaws.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

(d)(1) A for-profit corporation may convert to a nonprofit corporation under the Arkansas Nonprofit Corporation Act, §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224, or the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq., upon the filing of an amendment to the corporation's articles of incorporation under either § 4-28-206 or § 4-33-202.

(2) After the filing and conversion have taken place, the converted corporation shall comply with either the Arkansas Nonprofit Corporation Act, §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224, or the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.

History. Acts 1987, No. 958, § 64-202; **Amendments.** The 2019 amendment 2007, No. 638, § 6; 2019, No. 108, § 1. added (d).

SUBCHAPTER 11 — CONVERSION AND MERGER

RESEARCH REFERENCES

ALR. Determination of Whether State or Federal Law Governs Corporate Successorship When Dispute Concerns Debts to National Government, 29 A.L.R. Fed. 3d Art. 2 (2018).

SUBCHAPTER 14 — DISSOLUTION**Part B: Administrative Dissolution**

SECTION.

4-27-1420. Grounds for administrative

dissolution. [Effective May 1, 2021.]

Effective Dates. Acts 2019, No. 819, § 26(a): May 1, 2021. Effective date clause provided: “Sections 3-17 and 20-24 of this act are effective on and after May 1, 2021”.

PART A: VOLUNTARY DISSOLUTION**4-27-1407. Unknown claims against dissolved corporation.****CASE NOTES****Liability Considered.**

In a mineral rights case, a jury properly considered whether former shareholders could have been liable under this section because there was substantial evidence that a settlement agreement liquidated a

corporation’s assets and distributed them to individual shareholders and/or their assignees. *Smith v. Mt. Pine Timber, Inc.*, 2016 Ark. App. 193, 487 S.W.3d 409 (2016).

PART B: ADMINISTRATIVE DISSOLUTION**4-27-1420. Grounds for administrative dissolution. [Effective May 1, 2021.]**

The Secretary of State may commence a proceeding under § 4-27-1421 to administratively dissolve a corporation if:

(1) the corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(2) the corporation does not deliver its annual franchise tax report to the Department of Finance and Administration within sixty (60) days after it is due;

(3) the corporation is without a registered agent in this state for sixty (60) days or more;

(4) the corporation does not notify the Secretary of State within sixty (60) days that its registered agent has been changed or has resigned; or

(5) the corporation’s period of duration stated in its articles of incorporation expires.

History. Acts 1987, No. 958, § 64-1408; 2007, No. 638, § 15; 2019, No. 819, § 7.

A.C.R.C. Notes. Acts 2019, No. 819, § 1, provided: "Title. This act shall be known and may be cited as the 'Arkansas Tax Reform Act of 2019'".

Acts 2019, No. 819, § 2, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) The Arkansas Tax Reform and Relief Legislative Task Force was charged with:

"(A) Examining and identifying areas of potential tax reform within the tax laws; and

"(B) Recommending legislation to the General Assembly, in part, to modernize and simplify the Arkansas tax code and ensure fairness to all taxpayers;

"(2) There are several areas of the tax code that should be amended to reform the state's tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

"(3) Any savings realized by the state through tax reforms should be dedicated to reducing the tax burden for Arkansas taxpayers.

"(b) It is the intent of the General Assembly to:

"(1) Reform Arkansas tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

"(2) Offset any revenue savings realized through tax reform with corresponding changes to reduce the tax burden for Arkansas taxpayers".

Publisher's Notes. For text of section effective until May 1, 2021, see the bound volume.

Amendments. The 2019 amendment substituted "Department of Finance and Administration" for "Secretary of State" in (2).

Effective Dates. Acts 2019, No. 819, § 26(a): May 1, 2021. Effective date clause provided: "Sections 3-17 and 20-24 of this act are effective on and after May 1, 2021".

SUBCHAPTER 15 — FOREIGN CORPORATIONS

Part C: Revocation of Certificate of Authority

SECTION.

4-27-1530. Grounds for revocation. [Effective May 1, 2021.]

Effective Dates. Acts 2019, No. 819, § 26(a): May 1, 2021. Effective date clause provided: "Sections 3-17 and 20-24 of this act are effective on and after May 1, 2021".

PART C: REVOCATION OF CERTIFICATE OF AUTHORITY

4-27-1530. Grounds for revocation. [Effective May 1, 2021.]

The Secretary of State may commence a proceeding under § 4-27-1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) the foreign corporation does not deliver its annual franchise tax report to the Department of Finance and Administration within sixty (60) days after it is due;

(2) the foreign corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(3) the foreign corporation is without a registered agent in this state for sixty (60) days or more;

(4) the foreign corporation does not file an appropriate notice with the Secretary of State within sixty (60) days of the change or resignation of the foreign corporation's registered agent;

(5) an incorporator, director, officer, or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

(6) the Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

History. Acts 1987, No. 958, § 64-1512; 1987 (1st Ex. Sess.), No. 11, § 17; 2007, No. 638, § 23; 2019, No. 819, § 8.

A.C.R.C. Notes. Acts 2019, No. 819, § 1, provided: "Title. This act shall be known and may be cited as the 'Arkansas Tax Reform Act of 2019'".

Acts 2019, No. 819, § 2, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) The Arkansas Tax Reform and Relief Legislative Task Force was charged with:

"(A) Examining and identifying areas of potential tax reform within the tax laws; and

"(B) Recommending legislation to the General Assembly, in part, to modernize and simplify the Arkansas tax code and ensure fairness to all taxpayers;

"(2) There are several areas of the tax code that should be amended to reform the state's tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

"(3) Any savings realized by the state through tax reforms should be dedicated to reducing the tax burden for Arkansas taxpayers.

"(b) It is the intent of the General Assembly to:

"(1) Reform Arkansas tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

"(2) Offset any revenue savings realized through tax reform with corresponding changes to reduce the tax burden for Arkansas taxpayers".

Publisher's Notes. For text of section effective until May 1, 2021, see the bound volume.

Amendments. The 2019 amendment substituted "Department of Finance and Administration" for "Secretary of State" in (1).

Effective Dates. Acts 2019, No. 819, § 26(a): May 1, 2021. Effective date clause provided: "Sections 3-17 and 20-24 of this act are effective on and after May 1, 2021".

4-27-1531. Procedure for and effect of revocation.

CASE NOTES

Service of Process.

In a case based on § 4-60-103, which permits recovery on checks written on accounts with insufficient funds, appellant's service through the Secretary of State did not effect proper service on an LLC, whose certificate of authority in Arkansas had been revoked, despite appel-

lant's contention that service was properly effected based on this section; appellant neither alleged nor produced evidence that the cause of action arose while the LLC was authorized to conduct business in Arkansas. *Eliasnik v. Y&S Pine Bluff, LLC*, 2018 Ark. App. 138, 546 S.W.3d 497 (2018).

SUBCHAPTER 16 — RECORDS AND REPORTS**Part A: Records**

SECTION.

4-27-1601. Corporate records. [Effective May 1, 2021.]

SECTION.

4-27-1622. Annual franchise tax report for Department of Finance and Administration. [Effective May 1, 2021.]

Part B: Reports

4-27-1620. Financial statements for shareholders. [Effective May 1, 2021.]

Effective Dates. Acts 2019, No. 819, provided: "Sections 3-17 and 20-24 of this § 26(a): May 1, 2021. Effective date clause act are effective on and after May 1, 2021".

PART A: RECORDS**4-27-1601. Corporate records. [Effective May 1, 2021.]**

(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) its articles or restated articles of incorporation and all amendments to them currently in effect;

(2) its bylaws or restated bylaws and all amendments to them currently in effect;

(3) resolutions adopted by its board of directors creating one (1) or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;

(4) the minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three (3) years;

(5) all written communications to shareholders generally within the past three (3) years, including the financial statements furnished for the past three (3) years under § 4-27-1620;

(6) a list of the names and business addresses of its current directors and officers; and

(7) its most recent annual franchise tax report delivered to the Department of Finance and Administration under § 4-27-1622.

History. Acts 1987, No. 958, § 64-1601; 2019, No. 819, § 9.

A.C.R.C. Notes. Acts 2019, No. 819, § 1, provided: "Title. This act shall be known and may be cited as the 'Arkansas Tax Reform Act of 2019'".

Acts 2019, No. 819, § 2, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) The Arkansas Tax Reform and Relief Legislative Task Force was charged with:

"(A) Examining and identifying areas of potential tax reform within the tax laws; and

"(B) Recommending legislation to the General Assembly, in part, to modernize and simplify the Arkansas tax code and ensure fairness to all taxpayers;

"(2) There are several areas of the tax code that should be amended to reform the state's tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

"(3) Any savings realized by the state through tax reforms should be dedicated to reducing the tax burden for Arkansas taxpayers.

"(b) It is the intent of the General Assembly to:

"(1) Reform Arkansas tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

"(2) Offset any revenue savings realized through tax reform with corresponding changes to reduce the tax burden for Arkansas taxpayers".

Publisher's Notes. For text of section effective until May 1, 2021, see the bound volume.

Amendments. The 2019 amendment substituted "Department of Finance and Administration" for "Secretary of State" in (e)(7).

Effective Dates. Acts 2019, No. 819, § 26(a): May 1, 2021. Effective date clause provided: "Sections 3-17 and 20-24 of this act are effective on and after May 1, 2021".

PART B: REPORTS

4-27-1620. Financial statements for shareholders.

(a) A corporation shall furnish its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one (1) or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, his report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) stating his or her reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) A corporation shall furnish the annual financial statements to each shareholder within one hundred twenty (120) days after the close of each fiscal year. Thereafter, on written request from a shareholder who was not furnished the statements, the corporation shall furnish the shareholder the latest financial statements.

(d)(1) The requirement to furnish annual financial statements as described in subsection (c) of this section may be satisfied by sending annual financial statements to the shareholder's last known address as shown in the corporation's records by mail or, if a shareholder has provided an appropriate address for sending notices to the shareholder, by electronic mail or facsimile transmission.

(2) So long as a corporation has an outstanding class of securities registered under section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., the requirement to furnish annual financial statements may also be satisfied by the corporation's compliance with 17 C.F.R. § 240.14a-16, as it existed on January 1, 2017, with respect to the obligation of a corporation to furnish an annual financial report to shareholders in accordance with 17 C.F.R. § 240.14a-3(b), as it existed on January 1, 2017.

History. Acts 1987, No. 958, § 64-1605; "furnished" for "mailed", and "furnish the shareholder" for "mail him"; and added 2017, No. 553, §§ 1, 2.

Amendments. The 2017 amendment, (d).
in (c), substituted "furnish" for "mail",

4-27-1622. Annual franchise tax report for Department of Finance and Administration. [Effective May 1, 2021.]

(a) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Department of Finance and Administration for filing an annual franchise tax report that sets forth:

- (1) the name of the corporation;
 - (2) the jurisdiction under which the corporation is incorporated;
 - (3) the information required by § 4-20-105(a);
 - (4) the address of its principal office, wherever it is located;
 - (5) the names of its principal officers;
 - (6) the total number of authorized shares, itemized by class and series, if any, within each class;
 - (7) the total number of issued and outstanding shares, itemized by class and series, if any, within each class; and
 - (8) such other information as the Secretary of the Department of Finance and Administration may specify in a form promulgated under the Arkansas Corporate Franchise Tax Act of 1979, § 26-54-101 et seq.
- (b) The requirements as to the applicability, use, and filing of the annual franchise tax report shall be as set forth in the Arkansas Corporate Franchise Tax Act of 1979, § 26-54-101 et seq.

History. Acts 1987, No. 958, § 64-1607; **A.C.R.C. Notes.** Acts 2019, No. 819, 2007, No. 638, § 25; 2019, No. 819, § 10. § 1, provided: "Title. This act shall be

known and may be cited as the ‘Arkansas Tax Reform Act of 2019’.”

Acts 2019, No. 819, § 2, provided: “Legislative findings and intent.

“(a) The General Assembly finds that:

“(1) The Arkansas Tax Reform and Relief Legislative Task Force was charged with:

“(A) Examining and identifying areas of potential tax reform within the tax laws; and

“(B) Recommending legislation to the General Assembly, in part, to modernize and simplify the Arkansas tax code and ensure fairness to all taxpayers;

“(2) There are several areas of the tax code that should be amended to reform the state’s tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

“(3) Any savings realized by the state through tax reforms should be dedicated to reducing the tax burden for Arkansas taxpayers.

“(b) It is the intent of the General Assembly to:

“(1) Reform Arkansas tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

“(2) Offset any revenue savings realized through tax reform with corresponding changes to reduce the tax burden for Arkansas taxpayers”.

Publisher’s Notes. For text of section effective until May 1, 2021, see the bound volume.

Amendments. The 2019 amendment substituted “Department of Finance and Administration” for “Secretary of State” in the section heading and in the introductory language of (a); and substituted “Secretary of the Department of Finance and Administration may specify in a form promulgated under the Arkansas Corporate Franchise Tax Act of 1979, § 26-54-101 et seq.” for “Secretary of State may specify in a form promulgated pursuant to § 4-27-121(a)” in (a)(8).

Effective Dates. Acts 2019, No. 819, § 26(a): May 1, 2021. Effective date clause provided: “Sections 3-17 and 20-24 of this act are effective on and after May 1, 2021”.

CHAPTER 28

NONPROFIT ORGANIZATIONS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS NONPROFIT CORPORATION ACT.
4. SOLICITATION OF CHARITABLE CONTRIBUTIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

4-28-103. Statutory life insurance beneficiaries.

SECTION.

4-28-105. Capacity to assert and defend — Standing.

4-28-103. Statutory life insurance beneficiaries.

(a) For the purposes of this section, “public funds” means all federal, state, county, municipal, or other funds received from any taxing unit.

(b)(1) Nonprofit corporations shall not use public funds to purchase key-man life insurance as a form of deferred compensation.

(2) The insured employee shall not receive any cash values or other benefits from the purchase of key-man life insurance with public funds.

(3) Nonprofit corporations purchasing key-man life insurance with public funds shall not transfer ownership or any other rights under such policies directly or indirectly to the insured.

(c) Nonprofit corporations violating subsection (b) of this section shall not be eligible to receive any public funds for a period of two (2) years from the date the violations are discovered.

(d)(1)(A) Notwithstanding any other law or rule to the contrary, any religious, educational, charitable, or benevolent institution, organization, corporation, association, or trust, including, but not limited to, charitable remainder trusts, may be named beneficiary or owner, or both, of the policy or contract by any applicant for insurance upon his or her own life in any policy of life insurance issued by any life insurance company authorized to do business in this state or in the state of domicile of the applicant for insurance.

(B) The applicant for insurance shall be deemed to have an unlimited insurable interest in his or her own life and is entitled to name any of the institutions as beneficiary of the insurance, and the beneficiaries or owners, or both, shall have the right to receive all death benefits provided for by the policy and to exercise the rights of ownership if granted ownership.

(2) As to any life insurance policies heretofore issued by insurers naming any of the aforementioned institutions as beneficiaries or owners, or both, if the applicant for insurance was also the insured, the beneficiaries or owners, or both, shall be entitled to receive all death benefits provided by the policy and to exercise the rights of ownership if granted ownership.

History. Acts 1987, No. 240, §§ 1-3; **Amendments.** The 2019 amendment 1993, No. 1147, § 1803; 2019, No. 315, substituted “rule” for “regulation” in § 109. (d)(1)(A).

4-28-105. Capacity to assert and defend — Standing.

(a) A nonprofit organization may, in its own name, institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.

(b) A nonprofit organization may, in its own name, assert a claim on behalf of its members if:

(1) One (1) or more members of the nonprofit organization have standing to assert a claim in their own rights;

(2) The interests the nonprofit organization seeks to protect are germane to its purpose; and

(3) Neither the claim asserted nor the relief requested requires the participation of a member.

History. Acts 2017, No. 822, § 1; 2019, No. 379, § 2. substituted “own rights” for “own right” in (b)(1).

Amendments. The 2019 amendment

SUBCHAPTER 2 — ARKANSAS NONPROFIT CORPORATION ACT

SECTION.

4-28-206. Articles of incorporation generally.

4-28-217. Rules by state agencies applicable.

SECTION.

4-28-222. Involuntary dissolution.

Effective Dates. Acts 2019, No. 108, § 6: Feb. 13, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that a for-profit corporation could face severe adverse tax consequences for reorganizing as a nonprofit corporation that may result in being subjected to unwarranted penalties; that existing statutes relating to the process of converting to a nonprofit entity need amending to eliminate uncertainty and to prevent irreparable harm on businesses operating in this state; and that this act is immediately necessary to clarify state law governing

conversion by a for-profit corporation to a nonprofit corporation and provide for timely administration of business procedures. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto”.

4-28-206. Articles of incorporation generally.

(a) Any association of persons or for-profit corporation organized under the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., desirous of becoming incorporated under the provisions of the Arkansas Nonprofit Corporation Act, §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224, shall file with the circuit court of the county in which the main office or principal place of business of the proposed corporation is located or proposed to be located signed and verified articles of incorporation, which shall set forth the following:

- (1) The name of the corporation;
- (2) The period of duration, which may be perpetual;
- (3) The purposes for which the corporation is organized;
- (4) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;
- (5) The address of its main office or principal place of business, and the name of its registered agent at that address;
- (6) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;
- (7) The name and address of each incorporator;
- (8) A statement that the corporation:
 - (A) Is a nonprofit corporation; and

(B) Has converted under the Arkansas Nonprofit Corporation Act, §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224; and

(9)(A) A description of the treatment of shares of stock.

(B) The description of the treatment of shares of stock:

(i) May provide for the exchange of shares of stock for certificates of membership if the corporation has members; or

(ii) Shall provide that the shares of stock be canceled by the board of directors if the corporation does not have members.

(b) If the circuit court finds that the articles of incorporation conform to law and that the incorporation is for a lawful purpose and is in the best interests of the public, the court may issue an order approving the incorporation of the proposed association of persons.

(c) If the court approves the incorporation, the articles of incorporation in duplicate, signed and verified, and a copy of the order of the court approving the incorporation shall be transmitted to the Secretary of State, who shall, when all fees have been paid as prescribed in the Arkansas Nonprofit Corporation Act, §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224:

(1) File the original of the articles in his or her office; and

(2) Issue a certificate of incorporation to which he or she shall affix the other copy of the articles endorsed with the word “Filed” and the month, day, and year of the filing and return the certificate of incorporation to the incorporators or their representative.

(d) A corporation may amend its articles of incorporation from time to time, provided that the amendments are lawful under the Arkansas Nonprofit Corporation Act, §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224. A copy of all amendments shall be filed with the Secretary of State within thirty (30) days after their passage.

(e)(1) A for-profit corporation may convert to a nonprofit corporation under the Arkansas Nonprofit Corporation Act, §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224, or the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq., upon the filing of an amendment to the corporation’s articles of incorporation with the information required under this section.

(2) If an entity is a for-profit corporation that is converting to a nonprofit corporation, the conversion shall be approved by a three-fourths ($\frac{3}{4}$) vote of the shareholders of the business corporation.

(f) A conversion to a nonprofit corporation under this chapter is effective when an amendment to the articles of incorporation is filed with the Secretary of State and the Secretary of State has collected the filing fees, service fees, and copying fees required under § 4-33-122.

(g) A conversion to a nonprofit corporation under this chapter is not a dissolution.

History. Acts 1963, No. 176, §§ 5, 6; A.S.A. 1947, §§ 64-1905, 64-1906; Acts 2019, No. 108, § 2.

Amendments. The 2019 amendment inserted “or for-profit corporation orga-

nized under the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq.” in the introductory language of (a); and added (a)(8), (a)(9), and (e) through (g).

4-28-217. Rules by state agencies applicable.

(a) If any nonprofit corporation established under the Arkansas Nonprofit Corporation Act, §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224, engages in any activity controlled or regulated by any officer, agency, or department of this state, the activity shall be conducted in compliance with the laws and such rules as may be promulgated by the officer, agency, or department.

(b) For the purpose of furthering the organization and operation of any nonprofit corporation as authorized by the Arkansas Nonprofit Corporation Act, §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224, any such officer, agency, or department of this state may issue necessary permits and licenses to the corporations and regulate the use of the permits and licenses as may be required for the operation of the corporations.

History. Acts 1963, No. 176, § 16; substituted “Rules” for “Regulations” in A.S.A. 1947, § 64-1916; Acts 2019, No. 315, § 110. the section heading; and deleted “and regulations” following “rules” in (a).

Amendments. The 2019 amendment

4-28-222. Involuntary dissolution.

A corporation incorporated under the provisions of the Arkansas Nonprofit Corporation Act, §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224, may be dissolved involuntarily by a decree of the Pulaski County Circuit Court in an action filed by the Attorney General or by a decree of the circuit court of the county in which that corporation is domiciled in an action filed by the prosecuting attorney when it is established that:

- (1) The corporation procured its articles of incorporation through fraud;
- (2) The corporation has continued to exceed or abuse the authority conferred upon it by law;
- (3) The corporation has failed for ninety (90) days to appoint and maintain a registered agent in this state;
- (4) The corporation has failed to keep proper accounting records as provided in the Arkansas Nonprofit Corporation Act, §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224;
- (5) The corporation constitutes a public nuisance; or
- (6) The corporation has violated the laws of this state or the rules of any state regulatory board or commission having jurisdiction of any activity of the corporation.

History. Acts 1963, No. 176, § 18; A.S.A. 1947, § 64-1918; Acts 2019, No. 315, § 111.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (6).

SUBCHAPTER 4 — SOLICITATION OF CHARITABLE CONTRIBUTIONS

SECTION.

- 4-28-401. Definitions.
 4-28-402. Registration of charitable organizations prior to solicitation.
 4-28-403. Annual financial reports and fiscal records.
 4-28-404. Charitable organizations exempted from registration and financial disclosure requirements.
 4-28-405. Charitable organization — Filing of contracts.
 4-28-406. Fund-raising counsel — Registration — Fees.
 4-28-407. Paid solicitors — Registration, fees, and bond — Filing of contracts — Solicitation

SECTION.

- notice — Contract requirements — Prohibited practices — Records — Deposit of funds.
 4-28-408. Commercial coventurers — Filing of contracts — Terms — Accounting — Disclosures required in advertising.
 4-28-410. Documents.
 4-28-411. Professional telemarketers — Registration and renewal.
 4-28-412. Prohibited acts.
 4-28-413. Nonresident organization — Service of process.
 4-28-415. Disposition of fees.
 4-28-417. Access to records.

Effective Dates. Acts 2017, No. 727,
 § 16: “effective on and after January 1,
 2018”.

4-28-401. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Charitable organization” means any person:

(A) Who is or holds himself or herself out to be established for:

(i) Any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose; or

(ii) The benefit of law enforcement personnel, fire fighters, or other persons who protect the public safety; or

(B) Who in any manner employs a charitable appeal as the basis of any solicitation or an appeal which has a tendency to suggest there is a charitable purpose to any solicitation;

(2) “Charitable purpose” means any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or eleemosynary objective;

(3) “Charitable sales promotion” means an advertising or sales campaign conducted by a commercial coventurer which represents that the purchase or use of goods or services offered by the commercial coventurer will benefit a charitable organization or purpose;

(4) “Commercial coventurer” means any person who for profit or other consideration is regularly and primarily engaged in trade or commerce other than in connection with the raising of funds or any other thing of value for a charitable organization and who advertises that the purchase or use of his or her goods, services, entertainment, or

any other thing of value normally sold without a charitable appeal will benefit a charitable organization during a charitable sales promotion;

(5) "Contribution" means the grant, promise, or pledge of money, credit, property, financial assistance, or other thing of value in response to a solicitation;

(6)(A) "Fund-raising counsel" means any person who for a flat fixed fee or fixed hourly rate under a written agreement plans, conducts, manages, carries on, advises, or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for or on behalf of any charitable organization, but who actually solicits no contributions as a part of the services.

(B) Fund-raising counsel do not receive or control funds or assets solicited for charitable purposes, nor do they procure or employ any compensated person to do so.

(C) No lawyer, investment counselor, or banker who advises a person to make a contribution shall be deemed, as a result of that advice, to be a fund-raising counsel.

(D) A bona fide salaried officer or employee of a registered or exempt charitable organization shall not be deemed to be a fund-raising counsel;

(7) "Gross revenue" means income of any kind from all sources, including all amounts received as the result of any solicitation by a paid solicitor;

(8)(A) "Membership" means those persons to whom, for payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit in addition to the right to vote, elect officers, or hold offices.

(B) The term "membership" shall not include those persons who are granted a membership upon making a contribution as the result of solicitation;

(9)(A) "Paid solicitor" means a person who for compensation, other than any nonmonetary gift of nominal value awarded to a volunteer solicitor as an incentive or token of appreciation, performs for a charitable organization any service in connection with which contributions are solicited by the person or by any other person he or she employs, procures, or engages to solicit for compensation.

(B) A lawyer, investment counselor, or banker who advises a person to make a contribution is not a paid solicitor as a result of that advice.

(C) A bona fide nontemporary salaried officer or employee of a charitable organization is not a paid solicitor;

(10) "Parent organization" means that part of a charitable organization which supervises and exercises control over the solicitation and expenditure activities of one (1) or more chapters, branches, or affiliates;

(11) "Person" means:

(A) An individual;

- (B) A corporation;
- (C) A limited liability corporation;
- (D) An association;
- (E) A partnership;
- (F) A foundation; or
- (G) Any other entity, however styled;

(12) “Professional telemarketer” means any person who is employed or retained for compensation by a paid solicitor to solicit contributions in this state for charitable purposes; and

(13)(A) “Solicitation” means each request, either directly or indirectly, for a contribution on the plea or representation that the contribution will be used for a charitable purpose.

(B) “Solicitation” shall be deemed to occur when the request is made, at the place the request is received, whether or not the person making the request actually receives any contribution and includes, without limitation, the following methods of requesting a contribution:

- (i) Any oral or written request;
- (ii) Any announcement concerning an appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith:
 - (a) To the press;
 - (b) Over radio or television; or
 - (c) By telephone or telegraph;
- (iii) The distribution, circulation, posting, or publishing of any handbill, written advertisement, or other publication which directly or by implication seeks to obtain public support; or
- (iv) The sale of, offer of, or attempt to sell any advertisement, advertising space, subscription, ticket, or any service or tangible item:
 - (a) In connection with which any appeal is made for any charitable purpose or where the name of any charitable organization is used or referred to in the appeal as an inducement or reason for making the sale; or
 - (b) When or where, in connection with any sale, any statement is made that the whole or any part of the proceeds from the sale will be donated to any charitable purpose.

History. Acts 1999, No. 1198, § 1; 2017, No. 629, § 1.

Amendments. The 2017 amendment removed the (9)(A)(i) designation and deleted (9)(A)(ii); in (9)(B), substituted “A

lawyer” for “No lawyer” and “is not a paid solicitor” for “shall be deemed”, and deleted “to be a paid solicitor” at the end; and substituted “is not” for “shall not be deemed” in (9)(c).

4-28-402. Registration of charitable organizations prior to solicitation.

(a)(1) A charitable organization, in or out of the state, shall not solicit contributions from persons in this state by any means whatsoever until the charitable organization has:

(A) Registered; and

(B) Provided certain information concerning the charitable organization and its solicitation activity, as required by this subchapter, on forms to be provided by the Secretary of State, and has filed the information with the Secretary of State.

(2) The information so filed shall be available to the general public as a matter of public record, except and to the extent the records would otherwise be exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) The information required under subdivision (a)(1)(B) of this section shall be submitted in writing, sworn to under oath, and provided on a registration form provided by the Secretary of State, to include without limitation:

(1) The identity of the charitable organization by or for whom the solicitation is to be conducted, including without limitation:

(A) The federal Taxpayer Identification Number;

(B) Fictitious names or aliases under which the charitable organization operates;

(C) Program names under which the charitable organization solicits; and

(D) All chapters, branches, or affiliates that will operate, if any, under the registration of the parent charitable organization;

(2) The mailing address and physical address of the charitable organization;

(3) The charitable purpose of the charitable organization;

(4) The individual or officer who will have custody of the contributions;

(5) The individuals responsible for the distribution of the contributions;

(6) The period of time during which the solicitation or promotion is to be conducted;

(7) A description of the method or methods of solicitation or promotion, in such detail as may from time to time be determined by the Secretary of State;

(8) Whether any solicitation or promotion is to be conducted by voluntary unpaid solicitors, by paid solicitors, or both;

(9) If in whole or in part by paid solicitors:

(A) The name and address of each paid solicitor;

(B) The basis of payment;

(C) The nature of the arrangement; and

(D) A copy of the contract for services; and

(10) A copy of the appropriate Internal Revenue Service tax-exempt status form.

(c) A chapter, branch, or affiliate in this state of a registered parent charitable organization is not required to register provided the parent charitable organization files a consolidated financial report or tax information form for itself and the chapter, branch, or affiliate.

History. Acts 1999, No. 1198, § 2; 2017, No. 727, § 1.

Amendments. The 2017 amendment substituted “Secretary of State” for “Attorney General” throughout the section; substituted “charitable organization and its solicitation activity” for “solicitation” in (a)(1)(B); rewrote the introductory language of (b); added “including without limitation” in the introductory language of

(b)(1); added (b)(1)(A)-(D); in (b)(2), inserted “mailing” and “and physical address”; rewrote (b)(3); inserted “solicitation or” in (b)(6) and (b)(8); inserted “or promotion” in (b)(7); in (c), inserted “charitable” twice and substituted “is not” for “shall not be”; and made stylistic changes.

Effective Dates. Acts 2017, No. 727, § 16: “effective on and after January 1, 2018”.

4-28-403. Annual financial reports and fiscal records.

(a)(1)(A) Each charitable organization subject to this subchapter shall file with the Secretary of State an annual financial report on forms prescribed by the Secretary of State no later than one hundred eighty (180) days after the last date of the charitable organization’s fiscal year.

(B) The annual financial report described in subdivision (a)(1)(A) of this section shall be accompanied by a copy of all tax or information returns, including all schedules and amendments, submitted by the charitable organization to the Internal Revenue Service for the previous reporting year, except any schedules of contributors to the organization.

(2) A charitable organization which maintains its books on other than a calendar-year basis, upon application to the Secretary of State, may be permitted to file the annual financial report described in subdivision (a)(1)(A) of this section with its tax or information returns referred to in subdivision (a)(1)(B) of this section within six (6) months after the close of its fiscal year.

(b)(1) A charitable organization with gross revenue in excess of five hundred thousand dollars (\$500,000) in any fiscal year it is registered shall include with its submission of the annual financial report and tax records referred to in subdivision (a)(1) of this section an audit report of a certified public accountant.

(2) For purposes of this section, “gross revenue” does not include grants or fees from government agencies.

(c) Charitable organizations that are required to register with the Secretary of State but are not required to file an information or tax return with the Internal Revenue Service should submit in lieu of the information or tax return an annual report on forms to be provided by the Secretary of State.

(d) The Secretary of State may grant an extension of time not to exceed six (6) months for the filing of the tax records and other reports required by this section upon the charitable organization’s filing a notice that states the need for an extension.

(e)(1) Every charitable organization subject to the provisions of this subchapter shall keep a full and true record in such form as will enable the charitable organization accurately to provide the information required by this subchapter.

(2) All the records shall be open to inspection and copying at all times by the Secretary of State and the Attorney General.

(3) The charitable organization shall retain records for at least five (5) years after the end of the fiscal year to which they relate.

(4)(A) Any donor lists obtained under this subsection are not subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., without a court order authorizing the disclosure.

(B) However, donor lists and other records obtained under this subsection may be disclosed to other law enforcement agencies.

History. Acts 1999, No. 1198, § 3; 2017, No. 727, § 2; 2019, No. 137, § 1.

Amendments. The 2017 amendment substituted “Secretary of State” for “Attorney General” throughout the section; re-wrote (a); in (b)(1), inserted “annual financial report and” and substituted “subdivision (a)(1)” for “subsection (a)”; substituted “Charitable organizations” for “Charities” in (c); in (d), deleted “upon written request and for good cause shown” preceding “may grant” and added “upon the charitable organization’s filing a notice that states the need for an extension”;

inserted “Secretary of State and the” in (e)(2); substituted “at least five (5) years” for “no less than three (3) years” in (e)(3); and made stylistic changes.

The 2019 amendment, in (a)(1)(A), deleted “On or before August 1 of each year” preceding “Each charitable organization” and added “no later than one hundred eighty (180) days after the last date of the charitable organization’s fiscal year”.

Effective Dates. Acts 2017, No. 727, § 16: “effective on and after January 1, 2018”.

4-28-404. Charitable organizations exempted from registration and financial disclosure requirements.

The following charitable organizations are not subject to the reporting requirement under §§ 4-28-403 and 4-28-405, provided each organization shall submit an application for a reporting exemption to the Secretary of State, on forms prescribed by the Secretary of State, together with any information as the Secretary of State may require to substantiate a reporting exemption under this section:

(1) Religious organizations, i.e., any bona fide, duly constituted religious entity if the entity satisfies each of the following criteria:

(A) The entity is exempt from taxation pursuant to the Internal Revenue Code; and

(B) No part of the entity’s net income inures to the direct benefit of any individual;

(2) Educational institutions, i.e., any parent-teacher association or educational institution, the curricula of which in whole or in part are registered or approved by any state or the United States either directly or by acceptance of accreditation by an accrediting body;

(3) Political candidates and organizations, i.e., any candidate for national, state, or local elective office or a political party or other committee required to file information with the Federal Election Commission or any state election commission or its equivalent agency;

(4) Governmental organizations, i.e., any department branch or other instrumentality of the federal, state, or local governments;

(5) Nonprofit hospitals, i.e., any nonprofit hospital licensed by this state or in any other state;

(6) Any charitable organization which does not intend to solicit and receive, and does not actually receive, contributions in excess of twenty-five thousand dollars (\$25,000) during a calendar year:

(A) If all of its functions, including its fund-raising functions, are carried on by persons who are unpaid for their services; and

(B) Provided that no part of its assets or income inures to the benefit of or is paid to any officer or member; and

(7) Any person who solicits solely for the benefit of organizations described in subdivisions (1)-(6) of this section.

History. Acts 1999, No. 1198, § 4; 2017, No. 727, § 3.

Amendments. The 2017 amendment rewrote the introductory language of the section.

Effective Dates. Acts 2017, No. 727, § 16: “effective on and after January 1, 2018”.

4-28-405. Charitable organization — Filing of contracts.

(a) Each contract between a charitable organization and a fund-raising counsel shall be in writing and shall be filed by the charitable organization with the Secretary of State before the performance by the fund-raising counsel of any material services under the contract.

(b) The contract shall contain any information that will enable the Secretary of State to identify the services the fund-raising counsel is to provide and the manner of his or her compensation.

History. Acts 1999, No. 1198, § 5; 2017, No. 727, § 4.

Amendments. The 2017 amendment substituted “Secretary of State before” for “Attorney General prior to” in (a); in (b), substituted “any information that” for

“such information as” and “Secretary of State” for “Attorney General”; and made a stylistic change.

Effective Dates. Acts 2017, No. 727, § 16: “effective on and after January 1, 2018”.

4-28-406. Fund-raising counsel — Registration — Fees.

(a) A person shall not act as a fund-raising counsel until he or she has first registered with the Secretary of State.

(b) Applications for registration shall be submitted:

(1) In writing;

(2) Under oath;

(3) In the form prescribed by the Secretary of State; and

(4) Accompanied by an annual fee in the sum of one hundred dollars (\$100).

(c)(1) Registrations are valid for a period of one (1) year.

(2) Registrations may be renewed upon the filing of a new application and the tendering of the fee previously prescribed for registration.

History. Acts 1999, No. 1198, § 6; 2017, No. 727, § 5.

Amendments. The 2017 amendment substituted “Secretary of State” for “Attorney General” in (a) and (b)(3); inserted the (b)(1)-(4) designations; added “submitted” in the introductory language of (b); reded-

ignated former (c) as (c)(1) and (2); inserted “valid” in (c)(1); and made stylistic changes.

Effective Dates. Acts 2017, No. 727, § 16: “effective on and after January 1, 2018”.

4-28-407. Paid solicitors — Registration, fees, and bond — Filing of contracts — Solicitation notice — Contract requirements — Prohibited practices — Records — Deposit of funds.

(a)(1) A person shall not act as a paid solicitor unless he or she has first registered with the Secretary of State.

(2) Applications for registration shall be submitted:

(A) In writing;

(B) In the form prescribed by the Secretary of State; and

(C) Accompanied by a fee in the amount of two hundred dollars (\$200) at the time of registration.

(3) Each registration is valid for one (1) year and may be renewed for additional one-year periods.

(b)(1) An applicant for registration as a paid solicitor at the time of making the application shall file with and have approved by the Secretary of State a bond in which the applicant shall be the principal obligor in the sum of ten thousand dollars (\$10,000), with one (1) or more responsible sureties whose liability in the aggregate as the sureties shall be no less than that sum.

(2)(A) The bond shall run to the Secretary of State and the Attorney General for the use of the state and to any person, including a charitable organization, that may have a cause of action against the paid solicitor for any liabilities resulting from the paid solicitor’s conduct of any activities in violation of this subchapter or arising out of a violation of this subchapter or any rule adopted under this subchapter, including any actions arising under this subchapter that give rise to a violation of the Deceptive Trade Practices Act, § 4-88-101 et seq.

(B) However, the aggregate liability of the surety to the state and to all other persons, including charitable organizations, shall not exceed the sum of the bond.

(c) At least fifteen (15) days before the commencement of each solicitation campaign, a paid solicitor shall file with the Secretary of State a copy of the contract described in subsection (d) of this section.

(d) A contract between a paid solicitor and a charitable organization shall:

(1) Be in writing;

(2) Clearly state the respective obligations of the paid solicitor and the charitable organization, including the compensation or remuneration to be paid by the charitable organization to the paid solicitor; and

(3) Require delivery of the names and addresses of all persons making contributions and the amounts thereof to the charitable organization.

(e)(1) A paid solicitor shall not represent that any part of the contributions received will be given or donated to any charitable organization unless the organization has consented in writing to the use of its name before the solicitation campaign.

(2) The written consent shall be signed by an authorized officer, director, or trustee of the charitable organization.

(f)(1) A paid solicitor shall not represent that tickets to an event are to be donated for use by another person unless the paid solicitor has first obtained a commitment in writing from a charitable organization stating that it will accept donated tickets and specifying the number of tickets that it will accept and provided no more contributions for donated tickets shall be solicited than the number of ticket commitments received from the charitable organization.

(2) A charitable organization shall not commit to accept more donated tickets than it can reasonably expect to use.

(3) Donated tickets shall be used according to the representations made to the consumer at the time of solicitation.

(g) A paid solicitor shall require any person he or she employs, procures, or engages to solicit to comply with the provisions of subsections (e) and (f) of this section.

(h)(1) A paid solicitor shall file a financial report for a solicitation campaign with the Secretary of State no more than ninety (90) days after a solicitation campaign has been completed and on the anniversary of the commencement of any solicitation campaign which lasts more than one (1) year.

(2) The financial report shall include gross revenue and an itemization of all expenditures incurred and the amount of moneys ultimately remitted to the charitable organization absent payment of any fees or costs to the paid solicitor.

(3) The report shall be completed on a form prescribed by the Secretary of State.

(4) An authorized official of the paid solicitor and two (2) authorized officials of the charitable organization shall sign the report, and they shall certify, under oath, that the report is true and complete to the best of their knowledge.

(i) A paid solicitor shall maintain during each solicitation campaign and for at least five (5) years after the completion of each solicitation campaign the following records, which shall be available to the Secretary of State and the Attorney General for inspection upon request:

(1) The name and residence of each employee, agent, or other person involved in the solicitation campaign;

(2) Records of all income received and expenses incurred in the course of the solicitation campaign; and

(3) The names and addresses of all persons making contributions and the amounts thereof.

(j) If a paid solicitor sells tickets to an event and represents that tickets will be donated for use by another, the paid solicitor shall maintain for at least five (5) years after the completion of the event the following record, which shall be available to the Secretary of State and the Attorney General for inspection upon request:

(1) The name and address of all organizations receiving donated tickets for use by others; and

(2) The number of tickets received by each organization.

(k) Each contribution in the control or custody of the paid solicitor shall, in its entirety and within five (5) days of its receipt, be deposited, maintained, and administered in an account in a bank or other federally insured financial institution that shall be in the name of the charitable organization and over which that charitable organization has sole control over all withdrawals.

(l) Any material change in any information filed with the Secretary of State pursuant to this section shall be reported in writing by the paid solicitor to the Secretary of State not more than thirty (30) days after the change occurs.

(m) All records required under this section shall be open to inspection, examination, and copying during usual and customary business hours by the Secretary of State and the Attorney General or other authorized agencies.

History. Acts 1999, No. 1198, § 7; 2017, No. 727, § 6.

Amendments. The 2017 amendment substituted “Secretary of State” for “Attorney General” throughout the section; inserted “Secretary of State and the” preceding “Attorney General” in (b)(2)(A), (i), and (j); added “submitted” in the introductory language of (a)(2); inserted the (a)(2)(A)-(C) designations; substituted “rule” for “regulation” in (b)(2)(A); substituted “not” for “in no event” in (b)(2)(B);

inserted “person” in (f)(1); substituted “shall” for “will” in (f)(3); substituted “charitable organization” for “charity” in (h)(2); substituted “at least five (5) years” for “not less than three (3) years” in the introductory language of (i) and (j); inserted the (j)(1) and (2) designations; and made stylistic changes.

Effective Dates. Acts 2017, No. 727, § 16: “effective on and after January 1, 2018”.

4-28-408. Commercial coventurers — Filing of contracts — Terms — Accounting — Disclosures required in advertising.

(a)(1) Every charitable organization subject to the registration requirements of this subchapter that agrees to permit a charitable sales promotion to be conducted in its behalf shall obtain a written agreement from the commercial coventurer and file a copy of the agreement with the Secretary of State before the commencement of the charitable sales promotion within this state.

(2) An authorized representative of the charitable organization and the commercial coventurer shall sign the agreement, and the terms of the agreement shall include at a minimum the following:

(A) The goods or services to be offered to the public;

(B) The geographic area where, and the starting and final date when, the offering is to be made;

(C) The manner in which the name of the charitable organization is to be used, including any representation to be made to the public as to the amount or percent per unit of goods or service purchased or used that is to benefit the charitable organization;

(D) A provision for an accounting on a per unit basis to be given by the commercial coventurer to the charitable organization and the date on which it is to be made; and

(E) The date when and the manner in which the benefit is to be conferred on the charitable organization.

(b) A commercial coventurer shall keep the final accounting for each charitable sales promotion for three (3) years after the accounting date, and the accounting shall be available to the Secretary of State and the Attorney General upon reasonable request.

(c)(1) A commercial coventurer shall disclose in each advertisement for a charitable sales promotion the amount per unit of goods or services purchased or used that is to benefit the charitable organization or purpose.

(2) The amount may be expressed as a dollar amount or as a percentage of the value of the goods or services purchased or used.

History. Acts 1999, No. 1198, § 8; 2017, No. 727, §§ 7, 8.

Amendments. The 2017 amendment, in (a)(1), substituted “that” for “which”, substituted “Secretary of State before” for “Attorney General prior to”, and substituted “of the charitable sales promotion

within this state” for “within this state of the charitable sales promotion”; and inserted “Secretary of State and the” in (b).

Effective Dates. Acts 2017, No. 727, § 16: “effective on and after January 1, 2018”.

4-28-410. Documents.

(a) All contracts, scripts, pamphlets, handouts, and other materials used by paid solicitors shall be in writing, and true and correct copies of all documents used in any promotion shall be kept on file in the offices of the paid solicitor and in the offices of the charitable organization on whose behalf the promotion is conducted for a period of five (5) years from the date the solicitation of contributions for the promotion commences.

(b) The documents shall be available for inspection, examination, and copying by the Secretary of State and the Attorney General and other authorized agencies during usual and customary business hours.

History. Acts 1999, No. 1198, § 10; 2017, No. 727, § 9.

Amendments. The 2017 amendment substituted “five (5) years” for “three (3) years” in (a); and inserted “Secretary of State and the” in (b).

Effective Dates. Acts 2017, No. 727, § 16: “effective on and after January 1, 2018”.

4-28-411. Professional telemarketers — Registration and renewal.

(a) Every professional telemarketer shall be employed in a principal-agent relationship by a paid solicitor registered under this subchapter and shall, within seventy-two (72) hours after accepting employment, register with the Secretary of State.

(b) An application for registration under this section shall be in writing, under oath, in the form prescribed by the Secretary of State, and shall be accompanied by a fee in the sum of ten dollars (\$10.00).

(c) When effected, the registration shall be for a period of one (1) year and may be renewed upon the payment of the fee prescribed in this section for additional one-year periods.

History. Acts 1999, No. 1198, § 11; 2017, No. 727, § 10.

Amendments. The 2017 amendment substituted “Secretary of State” for “Attorney General” in (a) and (b); in (a), substituted “shall” for “must” and “under” for

“pursuant to”; and substituted “An application for registration under this section” for “Application for registration” in (b).

Effective Dates. Acts 2017, No. 727, § 16: “effective on and after January 1, 2018”.

4-28-412. Prohibited acts.

It shall be a violation of this subchapter for:

(1) Any person to make any misrepresentation, either express or implied, during the course of soliciting funds for a charitable organization;

(2) Any charitable organization to engage in any financial transaction that knowingly jeopardizes or interferes with the ability of the charitable organization to accomplish its charitable purpose;

(3) Any person to knowingly use or exploit the fact of registration so as to lead the public to believe that such registration constitutes an endorsement or approval by the state;

(4) Any person to knowingly misrepresent that any other person sponsors or endorses a solicitation;

(5) Any person to knowingly either use the name of a charitable organization or display any emblem, device, or printed matter belonging to or associated with a charitable organization without the express written permission of the charitable organization;

(6) Any charitable organization to knowingly use a name that is the same as or confusingly similar to the name of another charitable organization unless the latter organization consents in writing to its use;

(7) Any charitable organization to represent itself as being associated with another charitable organization without the express written acknowledgment and endorsement of the other charitable organization;

(8) Any person to knowingly make any false or misleading statements on any document required to be filed with the Secretary of State;

(9) Any person to fail to substantially comply with the requirements of this subchapter;

(10) Any charitable organization to use the services of an unregistered paid solicitor who is required to register pursuant to this subchapter;

(11) Any paid solicitor to solicit contributions from citizens or entities located in this state on behalf of an unregistered charitable organization; and

(12) Any person to use an Arkansas address, including a return address, in any solicitation unless the:

(A) Charitable organization maintains and staffs an office at that address;

(B) Solicitation discloses in writing immediately proximate to the address located in this state both the address of the charitable organization's actual headquarters and the fact that the address is that of a mail drop box or is located in a mail-handling facility; or

(C) Person, if soliciting by phone, discloses the address of the organization's actual headquarters in addition to any address maintained in this state.

History. Acts 1999, No. 1198, § 12; substituted "Secretary of State" for "Attorney General" in (8).
2005, No. 257, § 1; 2017, No. 727, §§ 11, 12.

Amendments. The 2017 amendment substituted "subchapter" for "section" in the introductory language; and substituted "Secretary of State" for "Attorney General" in (8).
Effective Dates. Acts 2017, No. 727, § 16: "effective on and after January 1, 2018".

4-28-413. Nonresident organization — Service of process.

(a) A nonresident charitable organization, paid solicitor, fund-raising counsel, or professional telemarketer desiring to solicit funds within the State of Arkansas shall file with the Secretary of State an irrevocable written consent that in suits, proceedings, and actions growing out of the violation of this subchapter, or as a result of any activities conducted within this state giving rise to a cause of action, service on the Secretary of State shall be as valid and binding as if due service had been made on the charitable organization, paid solicitor, fund-raising counsel, or professional telemarketer.

(b)(1) In case any process or pleadings are served upon the Secretary of State, they shall be in triplicate, one (1) copy of which shall be filed with the Secretary of State, one (1) copy of which shall be forwarded by the Secretary of State to the Attorney General, and the other immediately forwarded by the Secretary of State by registered or certified mail to the principal office or place of business of the nonresident charitable organization, paid solicitor, fund-raising counsel, or professional telemarketer.

(2) Service placed upon the Secretary of State shall be returned no later than thirty (30) days.

History. Acts 1999, No. 1198, § 13; substituted "Secretary of State" for "Attorney General" twice in (a) and (b)(1); deleted "any provision of" following "viola-

Amendments. The 2017 amendment

deleted "any provision of" following "viola-

tion of" in (a); in (b)(1), substituted "triplicate" for "duplicate", and substituted "with the Secretary of State, one (1) copy of which shall be forwarded by the Secretary of State to the Attorney Gen-

eral" for "in the office of the Attorney General"; and rewrote (b)(2).

Effective Dates. Acts 2017, No. 727, § 16: "effective on and after January 1, 2018".

4-28-415. Disposition of fees.

All registration fees collected by the Secretary of State under this subchapter shall be deposited into the State Treasury, and the Treasurer of State shall credit them as general revenues to the various funds in the respective amounts to each and to be used as provided in the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 1999, No. 1198, § 15; 2017, No. 727, § 14.

and deleted "for the purposes" preceding "as provided".

Amendments. The 2017 amendment inserted "registration", substituted "Secretary of State" for "Attorney General", and "into" for "in" following "deposited",

Effective Dates. Acts 2017, No. 727, § 16: "effective on and after January 1, 2018".

4-28-417. Access to records.

The Attorney General shall have access to all records filed with the Secretary of State under this subchapter.

History. Acts 2017, No. 727, § 15.

§ 16: "effective on and after January 1,

Effective Dates. Acts 2017, No. 727, 2018".

CHAPTER 29

PROFESSIONAL CORPORATIONS

SUBCHAPTER.

2. ARKANSAS PROFESSIONAL CORPORATION ACT.
3. MEDICAL CORPORATION ACT.
4. DENTAL CORPORATION ACT.

SUBCHAPTER 2 — ARKANSAS PROFESSIONAL CORPORATION ACT

SECTION.

4-29-209. Employees.

4-29-210. Certificate of registration — Issuance, renewal, etc.

SECTION.

4-29-211. Certificate of registration — Suspension or revocation.

4-29-209. Employees.

Each individual employee licensed pursuant to the laws of this state to engage in his or her profession who is employed by a corporation subject to this subchapter shall remain subject to reprimand or discipline for his or her conduct under the provisions of the laws or rules governing or applicable to his or her profession.

History. Acts 1963, No. 155, § 16; A.S.A. 1947, § 64-2016; Acts 2019, No. 315, § 112. **Amendments.** The 2019 amendment substituted “rules” for “regulations”.

4-29-210. Certificate of registration — Issuance, renewal, etc.

(a) No corporation shall open, operate, or maintain an establishment for any of the purposes set forth in §§ 4-29-202 and 4-29-206 without a certificate of registration from the state board, department, or agency, as the case may be, authorized by law to license individuals to engage in the profession concerned.

(b) Applications for registration shall be made in writing and shall contain the name and address of the corporation and such other information as may be required by the board, department, or agency.

(c)(1) Upon receipt of the application, the board, department, or agency shall make an investigation of the corporation.

(2) If it finds that the incorporators, officers, directors, and shareholders are each licensed pursuant to the laws of Arkansas to engage in the particular profession involved, and if no disciplinary action is pending before it against any of them, and if it appears that the corporation will be conducted in compliance with the law and the rules of the board, department, or agency, it shall issue, upon payment of a registration fee of twenty-five dollars (\$25.00), a certificate of registration which shall remain effective until January 1 following the date of the registration.

(d) Upon written application of the holder, accompanied by a fee of ten dollars (\$10.00), the board, department, or agency which originally issued the certificate of registration shall annually renew the certificate of registration if it finds that the corporation has complied with its rules and the provisions of this subchapter.

(e) The certificate of registration shall be conspicuously posted upon the premises to which it is applicable.

(f) In the event of a change of location of the registered establishment, the board, department, or agency, in accordance with its rules, shall amend the certificate of registration so that it shall apply to the new location.

(g) No certificate of registration shall be assignable.

History. Acts 1963, No. 155, §§ 5-9; A.S.A. 1947, §§ 64-2005 — 64-2009; Acts 2019, No. 315, § 113-115. **Amendments.** The 2019 amendment substituted “rules” for “regulations” in (c)(2), (d), and (f).

4-29-211. Certificate of registration — Suspension or revocation.

(a) The state board, department, or agency which issued the certificate of registration may suspend or revoke it for any of the following reasons:

(1) The revocation or suspension of the license to practice the profession of any officer, director, shareholder, or employee not promptly removed or discharged by the corporation;

(2) Unethical professional conduct on the part of any officer, director, shareholder, or employee not promptly removed or discharged by the corporation;

(3) The death of the last remaining shareholder; or

(4) Upon finding that the holder of a certificate has failed to comply with the provisions of this subchapter or the rules prescribed by the state board, department, or agency that issued it.

(b) Before any certificate of registration is suspended or revoked, the holder shall be given written notice of the proposed action and the reasons therefor and shall be given a public hearing by the state board, department, or agency giving the notice, with the right to produce testimony and other evidence concerning the charges made. The notice shall also state the place and date of the hearing, which shall be at least ten (10) days after service of the notice.

History. Acts 1963, No. 155, §§ 10, 11; A.S.A. 1947, §§ 64-2010, 64-2011; Acts 2019, No. 315, § 116.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (a)(4).

SUBCHAPTER 3 — MEDICAL CORPORATION ACT

SECTION.

4-29-309. Certificate of registration — Issuance, renewal, etc.

SECTION.

4-29-310. Certificate of registration — Suspension or revocation.

4-29-309. Certificate of registration — Issuance, renewal, etc.

(a) No corporation shall open, operate, or maintain an establishment for any of the purposes set forth in § 4-29-305 without a certificate of registration from the Arkansas State Medical Board.

(b) Application for the registration shall be made to the board in writing and shall contain the name and address of the corporation and such other information as may be required by the board.

(c)(1) Upon receipt of the application, the board shall make an investigation of the corporation.

(2) If the board finds that the incorporators, officers, directors, and shareholders are each licensed pursuant to the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and if no disciplinary action is pending before the board against any of them, and if it appears that the corporation will be conducted in compliance with law and the regulations of the board, the board shall issue, upon payment of a registration fee of twenty-five dollars (\$25.00), a certificate of registration which shall remain effective until January 1 following the date of the registration.

(d) Upon written application of the holder, accompanied by a fee of ten dollars (\$10.00), the board shall annually renew the certificate of registration if the board finds that the corporation has complied with its rules and the provisions of this subchapter.

(e) The certificate of registration shall be conspicuously posted upon the premises to which it is applicable.

(f) In the event of a change of location of the registered establishment, the board, in accordance with its rules, shall amend the certificate of registration so that it shall apply to the new location.

(g) No certificate of registration shall be assignable.

History. Acts 1961, No. 179, §§ 5-9; A.S.A. 1947, §§ 64-1705 — 64-1709; Acts 2019, No. 315, §§ 117, 118.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (d) and (f).

4-29-310. Certificate of registration — Suspension or revocation.

(a) The Arkansas State Medical Board may suspend or revoke any certificate of registration for any of the following reasons:

(1) The revocation or suspension of the license to practice medicine of any officer, director, shareholder, or employee not promptly removed or discharged by the corporation;

(2) Unethical professional conduct on the part of any officer, director, shareholder, or employee not promptly removed or discharged by the corporation;

(3) The death of the last remaining shareholder; or

(4) Upon finding that the holder of a certificate has failed to comply with the provisions of this subchapter or the rules prescribed by the board.

(b)(1) Before any certificate of registration is suspended or revoked, the holder shall be given written notice of the proposed action and the reasons therefor and shall be given a public hearing by the board with the right to produce testimony concerning the charges made.

(2) The notice shall also state the place and date of the hearing which shall be at least five (5) days after service of the notice.

History. Acts 1961, No. 179, §§ 10, 11; A.S.A. 1947, §§ 64-1710, 64-1711; Acts 2019, No. 315, § 119.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (a)(4).

SUBCHAPTER 4 — DENTAL CORPORATION ACT

SECTION.

4-29-408. Certificate of registration — Issuance, renewal, etc.

SECTION.

4-29-409. Certificate of registration — Suspension or revocation.

4-29-408. Certificate of registration — Issuance, renewal, etc.

(a) No corporation shall open, operate, or maintain an establishment for any of the purposes set forth in § 4-29-404 without a certificate of registration from the Arkansas State Board of Dental Examiners.

(b) Application for the registration shall be made to the board in writing and shall contain the name and address of the corporation and such other information as may be required by the board.

(c)(1) Upon receipt of the application, the board shall make an investigation of the corporation.

(2) If the board finds that the incorporators, officers, directors, and shareholders are each licensed pursuant to the Arkansas Dental Practice Act, § 17-82-101 et seq., and if no disciplinary action is pending before the board against any of them, and if it appears that the corporation will be conducted in compliance with law and the rules of the board, the board shall issue upon payment of a registration fee of twenty-five dollars (\$25.00) a certificate of registration which shall remain effective until January 1 following the date of the registration.

(d) Upon written application of the holder, accompanied by a fee of ten dollars (\$10.00), the board shall annually renew the certificate of registration if the board finds that the corporation has complied with its rules and the provisions of this subchapter.

(e) The certificate of registration shall be conspicuously posted upon the premises to which it is applicable.

(f) In the event of a change of location of the registered establishment, the board, in accordance with its rules, shall amend the certificate of registration so that it shall apply to the new location.

(g) No certificate of registration shall be assignable.

History. Acts 1961, No. 471, §§ 5-9; A.S.A. 1947, §§ 64-1805 — 64-1809; Acts 2019, No. 315, §§ 120-122.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (c)(2), (d), and (f).

4-29-409. Certificate of registration — Suspension or revocation.

(a) The Arkansas State Board of Dental Examiners may suspend or revoke any certificate of registration for any of the following reasons:

(1) The revocation or suspension of the license to practice dentistry of any officer, director, shareholder, or employee not promptly removed or discharged by the corporation;

(2) Unethical professional conduct on the part of any officer, director, shareholder, or employee not promptly removed or discharged by the corporation;

(3) The death of the last remaining shareholder; or

(4) Upon finding that the holder of a certificate has failed to comply with the provisions of this subchapter or the rules prescribed by the board.

(b) Before any certificate of registration is suspended or revoked, the holder shall be given written notice of the proposed action and the reasons therefor and shall be given a public hearing by the board with the right to produce testimony concerning the charges made. The notice shall also state the place and date of the hearing, which shall be at least five (5) days after service of the notice.

History. Acts 1961, No. 471, §§ 10, 11; A.S.A. 1947, §§ 64-1810, 64-1811; 2019, No. 315, § 123.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (a)(4).

CHAPTER 30

COOPERATIVE ASSOCIATIONS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. COOPERATIVE BANKS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

4-30-107. Membership — Purposes — Powers.

SECTION.

4-30-108. Articles of incorporation.

4-30-107. Membership — Purposes — Powers.

(a) Any number of persons, corporations, or entities may associate themselves together as a cooperative corporation for any one (1) or more of the following purposes under the cooperative plan of the cooperative corporation:

(1) Conducting an agricultural, dairy, mercantile, mining, manufacturing, mechanical, marketing, warehousing, transportation, construction, building, or property management business;

(2) Conducting the business of the cooperative corporation; or

(3) Accomplishing a purpose of the cooperative corporation.

(b) A cooperative corporation may:

(1) Buy, sell, or deal in products:

(A) Produced or owned by the following:

(i) The cooperative corporation;

(ii) The individual members or patrons of the cooperative corporation;

(iii) Another cooperative corporation;

(iv) The individual members or patrons of another cooperative corporation; and

(B) Available in the open market;

(2) Negotiate the price at which the products of the cooperative corporation may be sold;

(3) Enter into a contract between the cooperative corporation and the individual members and patrons of the cooperative corporation or on behalf of the cooperative corporation or the individual members and patrons of the cooperative corporation;

(4) Purchase, hold, lease, mortgage, encumber, sell, exchange, and convey real and personal property;

(5) Erect buildings, structures, and other facilities on:

(A) Property owned or leased by the cooperative corporation; and

(B) A right-of-way legally acquired by the cooperative corporation;

(6) Issue bonds and other evidence of indebtedness and borrow money to finance the business of the cooperative corporation;

(7) Make an advance to the individual members and patrons of the cooperative corporation on products delivered by the individual members and patrons to the cooperative corporation;

(8) Loan money to an individual member of the cooperative corporation or a corporation or association from which the cooperative corporation is constituted, with security that the cooperative corporation considers sufficient;

(9) Purchase, acquire, hold, or dispose of stock of another association or corporation and assume all rights, interests, privileges, responsibilities, and obligations arising out of the ownership of the stock;

(10) Purchase, own, and hold shares of capital stock, memberships, interests in nonstock capital, and evidences of indebtedness of a corporation if the purchase, ownership, or holding of the shares of capital stock, memberships, interests in nonstock capital, and evidences of indebtedness of the corporation is necessary or incidental to accomplishing a purpose stated in the articles of incorporation of the cooperative corporation;

(11) Exercise fiduciary powers in relation to the members, cooperatives, or associations from which the cooperative corporation is constituted;

(12) Take, receive, and hold real and personal property, including without limitation the principal and interest of money or other funds and rights in a contract, in trust for any purpose not inconsistent with the purposes of the cooperative corporation as determined by the articles of incorporation of the cooperative corporation; and

(13) Exercise fiduciary powers in relation to taking, receiving, and holding real and personal property.

History. Acts 1921, No. 632, § 2; Pope's Dig., § 2263; A.S.A. 1947, § 64-1503; Acts 1989, No. 493, § 2; 2017, No. 748, § 2.

A.C.R.C. Notes. Acts 2017, No. 748, § 1, provided: "Legislative intent. The General Assembly finds that:

"(1) Many rural and small communities in Arkansas are losing residents and are struggling to preserve their unique local identity;

"(2) Many former residents of the state maintain an emotional attachment to their hometowns after they have moved and are interested in investing financially in their hometowns;

"(3) Local communities around this state often need capital injection; however, most struggle to attract capital investors to fund hometown and small town ventures;

"(4) It is the public policy of this state to:

"(A) Promote capitalism and democracy; and

"(B) Enable and encourage residents and citizens to:

"(i) Become entrepreneurs;

"(ii) Be more commercially productive;

"(iii) Create more jobs; and

"(iv) Create organic growth of business; and

"(5) Deregulation of cooperatives will open the door to investment of capital in Arkansas's most vulnerable places."

Amendments. The 2017 amendment added "— Powers" to the section heading; and rewrote the section.

4-30-108. Articles of incorporation.

(a) The members shall sign and acknowledge written articles of incorporation which shall contain:

- (1) The name of the cooperative corporation;
- (2) The name and residences of the persons forming the cooperative corporation;
- (3) The purpose of the organization;
- (4) The principal place of business;
- (5) The amount of capital stock;
- (6) The number of shares and the par value of each share;
- (7) The number of directors and the names of those selected for the first term; and

(8) The time for which the cooperative corporation is to continue if the cooperative corporation is not of perpetual duration.

(b) The original articles of incorporation or a certified copy of them shall be filed with the Secretary of State, who shall return to the cooperative corporation a certified copy of them, with the date of filing and attested with the seal of his or her office.

(c) For filing the articles of incorporation and amendments thereto under this subchapter, the same fees shall be paid to the Secretary of State as are now required under the general corporation law.

History. Acts 1921, No. 632, §§ 3-5; Pope's Dig., §§ 2264 — 2266; A.S.A. 1947, §§ 64-1504 — 64-1506; Acts 2017, No. 748, § 3.

A.C.R.C. Notes. Acts 2017, No. 748, § 1, provided: "Legislative intent. The General Assembly finds that:

"(1) Many rural and small communities in Arkansas are losing residents and are struggling to preserve their unique local identity;

"(2) Many former residents of the state maintain an emotional attachment to their hometowns after they have moved and are interested in investing financially in their hometowns;

"(3) Local communities around this state often need capital injection; however, most struggle to attract capital investors to fund hometown and small town ventures;

"(4) It is the public policy of this state to:

"(A) Promote capitalism and democracy; and

"(B) Enable and encourage residents and citizens to:

"(i) Become entrepreneurs;

"(ii) Be more commercially productive;

"(iii) Create more jobs; and

"(iv) Create organic growth of business; and

"(5) Deregulation of cooperatives will open the door to investment of capital in Arkansas's most vulnerable places."

Amendments. The 2017 amendment inserted "cooperative" preceding "corporation" in (a)(1), (a)(2), (a)(8), and (b); and substituted "if the cooperative corporation is not of perpetual duration" for "not to exceed fifty (50) years" in (a)(8).

SUBCHAPTER 2 — COOPERATIVE BANKS

SECTION.

4-30-207. Banks declared investment

companies — Penalty — Exception.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

4-30-207. Banks declared investment companies — Penalty — Exception.

(a) Every cooperative bank organized under this chapter prior to March 22, 1937, which is not situated in a city, town, or community in which there is also situated a state or national bank or a teller’s window branch thereof is declared to be an investment company and shall be placed under the regulation and supervision of the State Securities Department, in the same manner as now provided by law for other investment companies. The Securities Commissioner, in consultation with the Secretary of the Department of Commerce, is authorized, empowered, and directed to make and promulgate all such rules not inconsistent herewith as shall be necessary or convenient for the administration and carrying out of this subchapter and for the supervision and control of all such organizations.

(b) Failure to comply with any of the requirements of this section subjects the cooperative bank which is guilty of the failure and its president, its secretary, and its directors to the penalties provided for violation of the Arkansas Securities Act, § 23-42-101 et seq.

(c) However, nothing in this subchapter shall apply to or affect any cooperative bank organized under this chapter prior to March 22, 1937, and situated on the campus of a school, college, or university and employed by the school as a means of instruction.

History. Acts 1921, No. 632, § 23 as added by Acts 1937, No. 287, § 1; Pope’s Dig., § 2284; A.S.A. 1947, § 64-1523; Acts 2019, No. 315, § 124; 2019, No. 910, § 128.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” fol-

lowing “rules” in the second sentence of (a).

The 2019 amendment by No. 910 inserted “in consultation with the Secretary of the Department of Commerce” in the second sentence of (a).

CHAPTER 32

SMALL BUSINESS ENTITY TAX PASS THROUGH ACT

SUBCHAPTER.

1. GENERAL PROVISIONS.

SUBCHAPTER

7. OWNERSHIP AND TRANSFER OF PROPERTY.
8. ADMISSION AND WITHDRAWAL OF MEMBERS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

4-32-102. Definitions.

4-32-102. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Articles of organization" means articles filed under § 4-32-201, and those articles as amended and restated;
- (2) "Corporation" means a corporation formed under the laws of any state or foreign country, including professional corporations or associations;
- (3) "Court" includes every court having jurisdiction in the case;
- (4) "Event of dissociation" means an event that causes a person to cease to be a member as provided in § 4-32-802;
- (5) "Foreign limited liability company" means an organization that is:
 - (A) An unincorporated association;
 - (B) Organized under laws of a state other than the laws of this state, or under the laws of any foreign country;
 - (C) Organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and
 - (D) Not required to be registered or organized under any statute of this state other than this chapter;
- (6) "Limited liability company" or "domestic limited liability company" means an organization formed under this chapter;
- (7) "Limited liability company interest" or "interest in the limited liability company" means the interest that can be assigned under § 4-32-704 and charged under § 4-32-705;
- (8) "Limited partnership" means a limited partnership formed under the laws of any state or foreign country;
- (9) "Manager" or "managers" means, with respect to a limited liability company that has set forth in its articles of organization that it is to be managed by managers, the person or persons designated in accordance with § 4-32-401;
- (10) "Member" or "members" means a person or persons who have been admitted to membership in a limited liability company as provided in § 4-32-801 and who have not ceased to be members as provided in § 4-32-802;
- (11) "Operating agreement" means the written agreement which shall be entered into among all of the members as to the conduct of the business and affairs of a limited liability company;
- (12)(A) "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a

trust, an estate, an association, a corporation, a custodian, a nominee and other individual entity in its own or representative capacity, or any other legal entity.

(B) “Person” includes a protected series;

(13) “Professional service” means any type of professional service which may be legally performed only pursuant to a license or other legally mandated personal authorization. For example: the personal service rendered by certified public accountants, architects, engineers, dentists, doctors, and attorneys at law; and

(14) “State” means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

History. Acts 1993, No. 1003, § 102; No. 655, which amended this section, is 2019, No. 665, § 2. October 1, 2019.

Publisher’s Notes. Section 4-37-805, enacted by Acts 2019, No. 655, § 1, provides that the effective date of Acts 2019, **Amendments.** The 2019 amendment redesignated (12) as (12)(A); and added (12)(B).

SUBCHAPTER 3 — RELATIONS OF MEMBERS AND MANAGERS TO PERSONS
DEALING WITH THE LIMITED LIABILITY COMPANY

4-32-304. Liability of members to third parties.

CASE NOTES

Member Liability.

Limited liability company and its member were bound by their pleadings, and because they admitted that both the company and its member were placing conditions on the release of insurance proceeds, they both were held liable for conversion. The circuit court did not clearly err in finding the member personally liable be-

cause the member exercised dominion and control over insurance checks in both the member’s personal and business capacities as the member was personally obligated to maintain insurance on the damaged property under a lease. DWB, LLC v. D&T Pure Trust, 2018 Ark. App. 283, 550 S.W.3d 420 (2018).

SUBCHAPTER 7 — OWNERSHIP AND TRANSFER OF PROPERTY

SECTION.
4-32-705. Rights of judgment creditor.

4-32-705. Rights of judgment creditor.

(a)(1) On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the member’s limited liability company interest with payment of the unsatisfied amount of judgment with interest.

(2) To the extent so charged, the judgment creditor has only the rights of an assignee of the member’s limited liability company interest.

(3) This chapter does not deprive any member of the benefit of any exemption laws applicable to his or her limited liability company interest.

(b) Upon the filing of a charging application by a judgment creditor of a member under subdivision (a)(1) of this section and the recording of the charging application in the register of the Secretary of State as required under subsection (c) of this section, a temporary lien is created in favor of the judgment creditor against the member's membership interest in the limited liability company interest until a ruling by the court is entered on the record or the application is dismissed.

(c) The Secretary of State shall:

(1) Create a register within the Uniform Commercial Code lien filings for charging applications received under subsection (b) of this section; and

(2) Maintain the register so that the register can be searched in the same manner as the lien filings of the Uniform Commercial Code, § 4-1-101 et seq.

History. Acts 1993, No. 1003, § 705; added the (a)(1) through (a)(3) designations; and added (b) and (c).

Amendments. The 2019 amendment

SUBCHAPTER 8 — ADMISSION AND WITHDRAWAL OF MEMBERS

SECTION.

4-32-802. Events of dissociation.

4-32-802. Events of dissociation.

(a) A person ceases to be a member of a limited liability company upon the occurrence of one (1) or more of the following events:

(1) The member withdraws by voluntary act from the limited liability company as provided in subsection (c) of this section;

(2) The member ceases to be a member of the limited liability company as provided in § 4-32-706;

(3) The member is removed as a member:

(A) In accordance with an operating agreement; or

(B) Unless otherwise provided in writing in an operating agreement, when the member assigns all of his or her interest in the limited liability company, by an affirmative vote of a majority of the members who have not assigned their interests;

(4) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, the member:

(A) Makes an assignment for the benefit of creditors;

(B) Files a voluntary petition in bankruptcy;

(C) Is adjudicated a bankrupt or insolvent;

(D) Files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or rule;

(E) Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of the nature described in subdivision (a)(4)(D) of this section; or

(F) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties;

(5) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, if:

(A) Within one hundred twenty (120) days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or rule, the proceeding has not been dismissed; or

(B)(i) Within one hundred twenty (120) days after the appointment without his or her consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of his or her properties, the appointment is not vacated or stayed; or

(ii) Within one hundred twenty (120) days after the expiration of any stay, the appointment is not vacated;

(6) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of a member who is an individual:

(i) The member's death; or

(ii) The entry of an order by a court of competent jurisdiction adjudicating the member incompetent to manage his or her person or estate;

(7) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of a member who is a trust or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

(8) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of a member that is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company;

(9) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of a member that is a corporation, the filing of a certificate of its dissolution or the equivalent for the corporation or the revocation of its charter and the lapse of ninety (90) days after notice to the corporation of revocation without reinstatement of its charter; or

(10) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

(b) The members may provide in writing in an operating agreement for other events, the occurrence of which shall result in a person's ceasing to be a member of the limited liability company.

(c) A member may withdraw from a limited liability company only at the time or upon the happening of an event specified in the articles of organization or an operating agreement. Unless the articles of organi-

zation or an operating agreement provides otherwise, a member may not withdraw from a limited liability company prior to the dissolution and winding up of the limited liability company.

History. Acts 1993, No. 1003, § 802; 1997, No. 479, § 10; 1999, No. 1528, § 4; 2019, No. 315, §§ 125, 126.

Amendments. The 2019 amendment substituted “rule” for “regulation” in (a)(4)(D) and (a)(5)(A).

SUBCHAPTER 9 — DISSOLUTION

4-32-901. Dissolution.

CASE NOTES

Dissolution Denied.

Bankruptcy court could neither recognize the dissolution of an LLC nor judicially dissolve the LLC because dissolution of an Arkansas LLC occurred upon the happening of one of four enumerated events, none of which had occurred. Fur-

ther, judicial dissolution was reserved by statute for a circuit court within the state of Arkansas, and the court would not expand the definition of circuit court to include a federal bankruptcy court. *Caldwell v. Powell* (In re Powell), 580 B.R. 822 (Bankr. E.D. Ark. 2018).

4-32-902. Judicial dissolution.

CASE NOTES

Bankruptcy Court Could Not Dissolve LLC.

Bankruptcy court could neither recognize the dissolution of an LLC nor judicially dissolve the LLC because dissolution of an Arkansas LLC occurred upon the happening of one of four enumerated events, none of which had occurred. Fur-

ther, judicial dissolution was reserved by statute for a circuit court within the state of Arkansas, and the court would not expand the definition of circuit court to include a federal bankruptcy court. *Caldwell v. Powell* (In re Powell), 580 B.R. 822 (Bankr. E.D. Ark. 2018).

SUBCHAPTER 10 — FOREIGN LIMITED LIABILITY COMPANIES

4-32-1007. Transaction of business without registration.

CASE NOTES

Transacting Business.

Purported buyer of real estate was not entitled to partial summary judgment because there was a material issue of fact as to whether the buyer, a foreign limited liability company that was not registered to do business in Arkansas, was transacting business in Arkansas and thus statutorily barred from maintaining suit for

breach of a real estate contract. Specifically, a material issue of fact existed as to whether the company was engaged in the business of buying land for investment or profit, as opposed to merely owning land without more under § 4-32-1008. *Serio v. Copeland Holdings, LLC*, 2017 Ark. App. 280, 521 S.W.3d 131 (2017).

4-32-1008. Transactions not constituting transacting business.

CASE NOTES

Transacting Business.

Purported buyer of real estate was not entitled to partial summary judgment because there was a material issue of fact as to whether the buyer, a foreign limited liability company that was not registered to do business in Arkansas, was transacting business in Arkansas and thus statutorily barred from maintaining suit for

breach of a real estate contract under § 4-32-1007. Specifically, a material issue of fact existed as to whether the company was engaged in the business of buying land for investment or profit, as opposed to merely owning land under this section. *Serio v. Copeland Holdings, LLC*, 2017 Ark. App. 280, 521 S.W.3d 131 (2017).

CHAPTER 33

THE ARKANSAS NONPROFIT CORPORATION ACT OF 1993

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. ORGANIZATION.

SUBCHAPTER 1 — GENERAL PROVISIONS

Part B: Filing Documents

SECTION.

4-33-120. Filing requirements. [Effective May 1, 2021.]

Effective Dates. Acts 2019, No. 819, § 26(a): May 1, 2021. Effective date clause

provided: “Sections 3-17 and 20-24 of this act are effective on and after May 1, 2021”.

PART B: FILING DOCUMENTS

4-33-120. Filing requirements. [Effective May 1, 2021.]

- (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.
- (b) This chapter must require or permit filing the document in the office of the Secretary of State.
- (c) The document must contain the information required by this chapter. It may contain other information as well.
- (d) The document must be typewritten or printed.
- (e) The document must be in the English language. However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) by the presiding officer of its board of directors of a domestic or foreign corporation, its president, or by another of its officers;

(2) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing a document shall sign it and state beneath or opposite the signature his or her name and the capacity in which he or she signs. The document may, but need not, contain:

(1) the corporate seal;

(2) an attestation by the secretary or an assistant secretary; or

(3) an acknowledgment, verification, or proof.

(h) If the Secretary of State has prescribed a mandatory form for a document under § 4-33-121, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by one (1) exact or conformed copy (except as provided in §§ 4-33-503 [repealed] and 4-33-1509), the correct filing fee, and proof of payment of any franchise tax, license fee, or penalty required by this chapter or other law.

History. Acts 1993, No. 1147, § 120; 2019, No. 819, § 11.

A.C.R.C. Notes. Acts 2019, No. 819, § 1, provided: "Title. This act shall be known and may be cited as the 'Arkansas Tax Reform Act of 2019'".

Acts 2019, No. 819, § 2, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) The Arkansas Tax Reform and Relief Legislative Task Force was charged with:

"(A) Examining and identifying areas of potential tax reform within the tax laws; and

"(B) Recommending legislation to the General Assembly, in part, to modernize and simplify the Arkansas tax code and ensure fairness to all taxpayers;

"(2) There are several areas of the tax code that should be amended to reform the state's tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

"(3) Any savings realized by the state through tax reforms should be dedicated to reducing the tax burden for Arkansas taxpayers.

"(b) It is the intent of the General Assembly to:

"(1) Reform Arkansas tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

"(2) Offset any revenue savings realized through tax reform with corresponding changes to reduce the tax burden for Arkansas taxpayers".

Publisher's Notes. For text of section effective until May 1, 2021, see the bound volume.

Amendments. The 2019 amendment inserted "proof of payment of" in (i).

Effective Dates. Acts 2019, No. 819, § 26(a): May 1, 2021. Effective date clause provided: "Sections 3-17 and 20-24 of this act are effective on and after May 1, 2021".

SUBCHAPTER 2 — ORGANIZATION

SECTION.

4-33-202. Articles of incorporation.

Effective Dates. Acts 2019, No. 108, § 6: Feb. 13, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that a for-profit corporation could face severe adverse tax consequences for reorganizing as a nonprofit corporation that may result in being subjected to unwarranted penalties; that existing statutes relating to the process of converting to a nonprofit entity need amending to eliminate uncertainty and to prevent irreparable harm on businesses operating in this state; and that this act is immediately necessary to clarify state law governing

conversion by a for-profit corporation to a nonprofit corporation and provide for timely administration of business procedures. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto".

4-33-202. Articles of incorporation.

- (a) The articles of incorporation must set forth:
 - (1) a corporate name for the corporation that satisfies the requirements of § 4-33-401;
 - (2) one (1) of the following statements:
 - (i) this corporation is a public benefit corporation;
 - (ii) this corporation is a mutual benefit corporation; or
 - (iii) this corporation is a religious corporation.
 - (3) the information required by § 4-20-105(a);
 - (4) the name and address of each incorporator;
 - (5) whether or not the corporation will have members;
 - (6) provisions not inconsistent with law regarding the distribution of assets on dissolution; and
 - (7) if converting to a nonprofit corporation from another form of entity, then the articles of incorporation shall include:
 - (A) a statement that the corporation:
 - (i) is a nonprofit corporation; and
 - (ii) has converted under the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.;
 - (B)(i) a description of the treatment of shares of stock.
 - (ii) the description of the treatment of shares of stock:
 - (a) may provide for the repurchase or exchange of shares of stock for certificates of membership if the corporation has members, and if the shares are repurchased, then the nonprofit corporation shall cancel the shares; or
 - (b) shall provide that the shares of stock be canceled by the board of directors if the corporation does not have members; and
 - (C) a statement that the Internal Revenue Service has been notified or will be notified within a reasonable time of the conversion and federal regulations were followed regarding the conversion.
- (b) The articles of incorporation may set forth:

(1) the purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(2) the names and addresses of the individuals who are to serve as the initial directors;

(3) provisions not inconsistent with law regarding:

(i) managing and regulating the affairs of the corporation;

(ii) defining, limiting, and regulating the powers of the corporation, its board of directors and members (or any class of members); and

(iii) the characteristics, qualifications, rights, limitations and obligations attaching to each or any class of members.

(4) any provision that under this chapter is required or permitted to be set forth in the bylaws.

(c)(1) Each incorporator named in the articles must sign the articles.

(2) If an entity is a for-profit corporation that is converting to a nonprofit corporation, the conversion shall be approved by a three-fourths ($\frac{3}{4}$) vote of the shareholders of the business corporation.

(d) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

(e) A for-profit corporation may convert to a nonprofit corporation under the Arkansas Nonprofit Corporation Act, §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224, or the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq., upon the filing of an amendment to the corporation's articles of incorporation with the information required under this section.

(f) A conversion to a nonprofit corporation under this chapter is effective when an amendment to the articles of incorporation is filed with the Secretary of State and the Secretary of State has collected the filing fees, service fees, and copying fees required under § 4-33-122.

History. Acts 1993, No. 1147, § 202; added (a)(7); redesignated (c) as (c)(1); and 2007, No. 638, § 39; 2019, No. 108, §§ 3-5. added (c)(2), (e), and (f).

Amendments. The 2019 amendment

CHAPTER 35

WATER AUTHORITY ACT

SUBCHAPTER.

2. FORMATION OF AND CONVERSION TO A PUBLIC WATER AUTHORITY.

SUBCHAPTER 2 — FORMATION OF AND CONVERSION TO A PUBLIC WATER AUTHORITY

SECTION.

4-35-204. Board of directors.

4-35-204. Board of directors.

(a)(1) A water authority shall have a board of directors composed of at least five (5) members.

(2) The specific number of initial directors and their terms of office shall be provided in its articles filed with the Arkansas Natural Resources Commission.

(3) Changes to the number and terms of directors may be provided in the articles or bylaws.

(b)(1) The initial directors of a water authority shall be approved by the commission, and they shall serve in accordance with those procedures that a water authority may specify in its bylaws.

(2)(A) A director shall continue in office until the director's successor is properly elected and accepts office.

(B) Successor directors shall be elected either by the board or by the water users as set forth in the bylaws.

(C) A director may serve successive terms.

(3) It is permissible for the bylaws of a water authority to provide that directors shall be selected from specific geographic areas within the total geographic area serviced by a water authority.

(4) In the event a water authority wants to modify or amend the procedures for election of directors, approval shall be expressly granted in writing by the commission.

(c) Unless otherwise provided in the articles or bylaws, the following shall apply to meetings of the board:

(1)(A)(i) If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting.

(ii) All other meetings are special meetings.

(B)(i) A board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through, the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting.

(ii) A director participating in a meeting by this means is deemed to be present in person at the meeting;

(2)(A) Except as provided in subdivision (c)(2)(C) of this section, regular meetings of the board may be held without notice.

(B) Except as provided in subdivision (c)(2)(C) of this section, special meetings of the board shall be preceded by at least two (2) days' written notice to each director of the date, time, and place, but not the purpose, of the meeting.

(C) Any board action to remove a director shall not be valid unless each director is given at least seven (7) days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived.

(D) The presiding officer of the board, the president, or twenty percent (20%) of the directors then in office may call and give notice of a meeting of the board;

(3)(A)(i) A director may at any time waive any notice required by this chapter, the articles, or bylaws.

(ii)(a) Except as provided in subdivision (c)(3)(B) of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes of the water authority's records.

(b) A signed waiver delivered by facsimile transmittal shall constitute a valid waiver of notice under this section.

(B) A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director, upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with this chapter or the articles or bylaws, objects to lack of notice and does not thereafter vote for or assent to the objected to action; and

(4)(A) Except as provided in the bylaws, a majority of the members of a board shall constitute a quorum for the transaction of business, and a vote of a majority of a quorum shall constitute an act of the board.

(B) No vacancy in the membership of a board shall impair the right of a quorum to exercise all the powers and duties of a water authority.

(C) All powers of a water authority shall be exercised by its board of directors or pursuant to its authorization.

(d)(1)(A) Unless prohibited or limited by the articles or bylaws, a board of directors may create one (1) or more committees of the board and appoint members of the board to serve on them.

(B) Each committee shall have two (2) or more directors who shall serve at the direction of the board.

(2) A committee of the board may not:

(A) Authorize the issuance of bonds or any related matters;

(B) Approve or recommend dissolution or the sale, pledge, or transfer of all or substantially all of the water authority's assets;

(C) Elect, appoint, or remove directors or fill vacancies on the board or on any of its committees; or

(D) Adopt, amend, or repeal the articles or bylaws.

(e)(1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(A) In good faith;

(B) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(C) In a manner the director reasonably believes to be in the best interests of the water authority.

(2) In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data if prepared or presented by:

(A) One (1) or more officers or employees of the water authority whom the director reasonably believes to be reliable and competent in the matters presented;

(B) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(C) A committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.

(f) A member of the board of a water authority shall serve without compensation except that he or she may be reimbursed for actual expenses incurred in the performance of his or her duties.

(g) All proceedings of a board shall be reduced to writing by the secretary of the water authority and appropriately recorded and maintained.

(h)(1) The board of directors of a public water authority may elect by majority vote to:

(A) Participate in the Arkansas Public Employees' Retirement System; and

(B) Allow full-time employees of a public water authority to become members of the Arkansas Public Employees' Retirement System.

(2) The public water authority shall pay the contributions required by the Board of Trustees of the Arkansas Public Employees' Retirement System in accordance with § 24-4-101 et seq.

History. Acts 2003, No. 1330, § 3; **Amendments.** The 2019 amendment added (h).
2019, No. 449, § 1.

CHAPTER 36

ARKANSAS BENEFIT CORPORATION ACT

SUBCHAPTER 1 — PRELIMINARY PROVISIONS

4-36-101. Title.

RESEARCH REFERENCES

Ark. L. Notes. Carol Goforth, I understand C and S Corporations, but what are B Corporations?, 2018 Ark. L. Notes 1987.

4-36-104. Formation — Fees.

RESEARCH REFERENCES

Ark. L. Notes. Carol Goforth, I understand C and S Corporations, but what are B Corporations?, 2018 Ark. L. Notes 1987.

SUBCHAPTER 2 — CORPORATE PURPOSES

4-36-201. Corporate purposes.

RESEARCH REFERENCES

Ark. L. Notes. Carol Goforth, I understand C and S Corporations, but what are B Corporations?, 2018 Ark. L. Notes 1987.

SUBCHAPTER 3 — ACCOUNTABILITY

4-36-301. Standard of conduct for directors.

RESEARCH REFERENCES

Ark. L. Notes. Carol Goforth, I understand C and S Corporations, but what are B Corporations?, 2018 Ark. L. Notes 1987.

4-36-302. Benefit director.

RESEARCH REFERENCES

Ark. L. Notes. Carol Goforth, I understand C and S Corporations, but what are B Corporations?, 2018 Ark. L. Notes 1987.

4-36-304. Benefit officer.

RESEARCH REFERENCES

Ark. L. Notes. Carol Goforth, I understand C and S Corporations, but what are B Corporations?, 2018 Ark. L. Notes 1987.

SUBCHAPTER 4 — TRANSPARENCY

4-36-401. Annual reports.

RESEARCH REFERENCES

Ark. L. Notes. Carol Goforth, I understand C and S Corporations, but what are B Corporations?, 2018 Ark. L. Notes 1987.

CHAPTER 37

UNIFORM PROTECTED SERIES ACT

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ESTABLISHING PROTECTED SERIES.
3. ASSOCIATED ASSET; ASSOCIATED MEMBER; PROTECTED-SERIES TRANSFERABLE INTEREST; MANAGEMENT; RIGHT OF INFORMATION.
4. LIMITATION ON LIABILITY AND ENFORCEMENT OF CLAIMS.
5. DISSOLUTION AND WINDING UP OF PROTECTED SERIES.
6. ENTITY TRANSACTIONS RESTRICTED.
7. FOREIGN PROTECTED SERIES.
8. MISCELLANEOUS PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 4-37-101. Short title.
 4-37-102. Definitions.
 4-37-103. Nature of protected series.
 4-37-104. Powers and duration of protected series.
 4-37-105. Governing law.
 4-37-106. Relation of operating agreement, this chapter, and the

SECTION.

- Small Business Entity Tax Pass Through Act.
 4-37-107. Additional limitations on operating agreement.
 4-37-108. Rules for applying Small Business Entity Tax Pass Through Act to specified provisions of chapter.

4-37-101. Short title.

This chapter may be cited as the “Uniform Protected Series Act”.

History. Acts 2019, No. 665, § 1.

4-37-102. Definitions.

In this chapter:

- (1) “Acquired entity” means the entity, all of one or more classes or series of interests of which are acquired in an interest exchange.
- (2) “Acquiring entity” means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange.
- (3) “Asset” means property:
 - (A) in which a series limited liability company or protected series has rights; or
 - (B) as to which the company or protected series has the power to transfer rights.
- (4) “Associated asset” means an asset that meets the requirements of § 4-37-301.
- (5) “Associated member” means a member that meets the requirements of § 4-37-302.
- (6) “Converted entity” means the converting entity as it continues in existence after a conversion.
- (7) “Converting entity” means the domestic entity that approves a plan of conversion pursuant to § 4-37-601 et seq., or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation.
- (8) “Foreign limited liability company” means an organization that is:
 - (A) an unincorporated association;
 - (B) organized under laws of a state other than the laws of this state, or under the laws of any foreign country;
 - (C) organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and
 - (D) not required to be registered or organized under any statute of this state other than the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq.

(9) "Foreign protected series" means an arrangement, configuration, or other structure established by a foreign limited liability company which has attributes comparable to a protected series established under this chapter. The term applies whether or not the law under which the foreign company is organized refers to "protected series".

(10) "Foreign series limited liability company" means a foreign limited liability company that has at least one foreign protected series.

(11) "Jurisdiction of formation" means the jurisdiction whose law governs the internal affairs of an entity.

(12) "Limited liability company" means an organization formed under the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq.

(13) "Manager" or "managers" means, with respect to a limited liability company that has set forth in its articles of organization that it is to be managed by managers, the person or persons designated in accordance with § 4-32-401.

(14) "Member" or "members" means a person or persons who have been admitted to membership in a limited liability company as provided in § 4-32-801 and who have not ceased to be members as provided in § 4-32-802.

(15) "Non-associated asset" means:

(A) an asset of a series limited liability company which is not an associated asset of the company; or

(B) an asset of a protected series of the company which is not an associated asset of the protected series.

(16) "Operating agreement" means the written agreement which shall be entered into among all of the members as to the conduct of the business and affairs of a limited liability company.

(17)(A) "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, a custodian, a nominee and other individual entity in its own or representative capacity, or any other legal entity.

(B) "Person" includes a protected series.

(18) "Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

(19) "Protected series", except in the phrase "foreign protected series", means a protected series established under § 4-37-201.

(20) "Protected-series manager" means a person under whose authority the powers of a protected series are exercised and under whose direction the activities and affairs of the protected series are managed under the operating agreement, this chapter, and the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq.

(21) "Protected-series transferable interest" means a right to receive a distribution from a protected series.

(22) "Protected-series transferee" means a person to which all or part of a protected series transferable interest of a protected series of a series limited liability company has been transferred, other than the company. The term includes a person that owns a protected-series

transferable interest as a result of ceasing to be an associated member of a protected series.

(23) “Record”, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(24) “Series limited liability company”, except in the phrase “foreign series limited liability company”, means a limited liability company that has at least one protected series.

(25) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(26) “State” means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(27) “Transfer” includes:

(A) an assignment;

(B) a conveyance;

(C) a sale;

(D) a lease;

(E) an encumbrance, including a mortgage or security interest;

(F) a gift; and

(G) a transfer by operation of law.

(28) “Transferable interest” means the right, as initially owned by a person in the person’s capacity as a member, to receive distributions from a limited liability company, whether or not the person remains a member or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

(29) “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member.

History. Acts 2019, No. 665, § 1.

4-37-103. Nature of protected series.

A protected series of a series limited liability company is a person distinct from:

(1) the company, subject to § 4-37-104(c), § 4-37-501(1), and § 4-37-502(d);

(2) another protected series of the company;

(3) a member of the company, whether or not the member is an associated member of the protected series;

(4) a protected-series transferee of a protected series of the company; and

(5) a transferee of a transferable interest of the company.

History. Acts 2019, No. 665, § 1.

4-37-104. Powers and duration of protected series.

(a) A protected series of a series limited liability company has the capacity to sue and be sued in its own name.

(b) Except as otherwise provided in subsections (c) and (d), a protected series of a series limited liability company has the same powers and purposes as the company.

(c) A protected series of a series limited liability company ceases to exist not later than when the company completes its winding up.

(d) A protected series of a series limited liability company may not:

(1) be a member of the company;

(2) establish a protected series; or

(3) except as permitted by law of this state other than this chapter, have a purpose or power that the law of this state other than this chapter prohibits a limited liability company from doing or having.

History. Acts 2019, No. 665, § 1.

4-37-105. Governing law.

The law of this state governs:

(1) the internal affairs of a protected series of a series limited liability company, including:

(A) relations among any associated members of the protected series;

(B) relations among the protected series and:

(i) any associated member;

(ii) the protected-series manager; or

(iii) any protected-series transferee;

(C) relations between any associated member and:

(i) the protected-series manager; or

(ii) any protected-series transferee;

(D) the rights and duties of a protected-series manager;

(E) governance decisions affecting the activities and affairs of the protected series and the conduct of those activities and affairs; and

(F) procedures and conditions for becoming an associated member or protected-series transferee;

(2) the relations between a protected series of a series limited liability company and each of the following:

(A) the company;

(B) another protected series of the company;

(C) a member of the company which is not an associated member of the protected series;

(D) a protected-series manager that is not a protected-series manager of the protected series; and

(E) a protected-series transferee that is not a protected-series transferee of the protected series;

(3) the liability of a person for a debt, obligation, or other liability of a protected series of a series limited liability company if the debt,

obligation, or liability is asserted solely by reason of the person being or acting as:

- (A) an associated member, protected-series transferee, or protected-series manager of the protected series;
 - (B) a member of the company which is not an associated member of the protected series;
 - (C) a protected-series manager that is not a protected-series manager of the protected series;
 - (D) a protected-series transferee that is not a protected-series transferee of the protected series;
 - (E) a manager of the company; or
 - (F) a transferee of a transferable interest of the company;
- (4) the liability of a series limited liability company for a debt, obligation, or other liability of a protected series of the company if the debt, obligation, or liability is asserted solely by reason of the company:
- (A) having delivered to the Secretary of State for filing under § 4-37-201(b) a protected series designation pertaining to the protected series or under § 4-37-201(d) or § 4-37-202(c) a statement of designation change pertaining to the protected series;
 - (B) being or acting as a protected-series manager of the protected series;
 - (C) having the protected series be or act as a manager of the company; or
 - (D) owning a protected-series transferable interest of the protected series; and
- (5) the liability of a protected series of a series limited liability company for a debt, obligation, or other liability of the company or of another protected series of the company if the debt, obligation, or liability is asserted solely by reason of:
- (A) the protected series:
 - (i) being a protected series of the company or having as a protected-series manager the company or another protected series of the company; or
 - (ii) being or acting as a protected-series manager of another protected series of the company or a manager of the company; or
 - (B) the company owning a protected-series transferable interest of the protected series.

History. Acts 2019, No. 665, § 1.

4-37-106. Relation of operating agreement, this chapter, and the Small Business Entity Tax Pass Through Act.

(a) Except as otherwise provided in this section and subject to § 4-37-107 and § 4-37-108, the operating agreement of a series limited liability company governs:

- (1) the internal affairs of a protected series, including:
 - (A) relations among any associated members of the protected series;

- (B) relations among the protected series and:
 - (i) any associated member;
 - (ii) the protected-series manager; or
 - (iii) any protected-series transferee;
 - (C) relations between any associated member and:
 - (i) the protected-series manager; or
 - (ii) any protected-series transferee;
 - (D) the rights and duties of a protected-series manager;
 - (E) governance decisions affecting the activities and affairs of the protected series and the conduct of those activities and affairs; and
 - (F) procedures and conditions for becoming an associated member or protected-series transferee;
- (2) relations among the protected series, the company, and any other protected series of the company;
- (3) relations between:
- (A) the protected series, its protected-series manager, any associated member of the protected series, or any protected-series transferee of the protected series; and
 - (B) a person in the person's capacity as:
 - (i) a member of the company which is not an associated member of the protected series;
 - (ii) a protected-series transferee or protected-series manager of another protected series; or
 - (iii) a transferee of the company.
- (b) If the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., restricts the power of an operating agreement to affect a matter, the restriction applies to a matter under this chapter in accordance with § 4-37-108.
- (c) If law of this state other than this chapter imposes a prohibition, limitation, requirement, condition, obligation, liability, or other restriction on a limited liability company, a member, manager, or other agent of the company, or a transferee of the company, except as otherwise provided in law of this state other than this chapter, the restriction applies in accordance with § 4-37-108.
- (d) Except as otherwise provided in § 4-37-107, if the operating agreement of a series limited liability company does not provide for a matter described in subsection (a) in a manner permitted by this chapter, the matter is determined in accordance with the following rules:
- (1) To the extent this chapter addresses the matter, this chapter governs.
 - (2) To the extent this chapter does not address the matter, the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., governs the matter in accordance with § 4-37-108.

History. Acts 2019, No. 665, § 1.

4-37-107. Additional limitations on operating agreement.

- (a) An operating agreement may not vary the effect of:
 - (1) this section;
 - (2) section 4-37-103;
 - (3) section 4-37-104(a);
 - (4) section 4-37-104(b) to provide a protected series a power beyond the powers the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., provides a limited liability company;
 - (5) section 4-37-104(c) or § 4-37-104(d);
 - (6) section 4-37-105;
 - (7) section 4-37-106;
 - (8) section 4-37-108;
 - (9) section 4-37-201, except to vary the manner in which a limited liability company approves establishing a protected series;
 - (10) section 4-37-202;
 - (11) section 4-37-301;
 - (12) section 4-37-302;
 - (13) section 4-37-303(a) or § 4-37-303(b);
 - (14) section 4-37-304(c), § 4-37-304(f), or § 4-37-304(g);
 - (15) section 4-37-401, except to decrease or eliminate a limitation of liability stated in § 4-37-401;
 - (16) section 4-37-402;
 - (17) section 4-37-403;
 - (18) section 4-37-404;
 - (19) section 4-37-501(1), § 4-37-501(4), and § 4-37-501(5);
 - (20) section 4-37-502, except to designate a different person to manage winding up;
 - (21) section 4-37-503;
 - (22) sections 4-37-601 et seq.;
 - (23) sections 4-37-701 et seq.;
 - (24) sections 4-37-801 et seq., except to vary:
 - (A) the manner in which a series limited liability company may elect under § 4-37-803(a)(2) to be subject to this chapter; or
 - (B) the person that has the right to sign and deliver to the Secretary of State for filing a record under § 4-37-803(b)(2); or
 - (25) a provision of this chapter pertaining to:
 - (A) registered agents; or
 - (B) the Secretary of State, including provisions pertaining to records authorized or required to be delivered to the Secretary of State for filing under this chapter.
- (b) An operating agreement may not unreasonably restrict the duties and rights under § 4-37-305 but may impose reasonable restrictions on the availability and use of information obtained under § 4-37-305 and may provide appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use.

4-37-108. Rules for applying Small Business Entity Tax Pass Through Act to specified provisions of chapter.

(a) Except as otherwise provided in subsection (b) and § 4-37-107, the following rules apply in applying § 4-37-106, § 4-37-304(c) and § 4-37-304(f), § 4-37-501(4)(A), § 4-37-502(a), and § 4-37-503(2):

(1) a protected series of a series limited liability company is deemed to be a limited liability company that is formed separately from the series limited liability company and is distinct from the series limited liability company and any other protected series of the series limited liability company.

(2) an associated member of the protected series is deemed to be a member of the company deemed to exist under subdivision (a)(1).

(3) a protected-series transferee of the protected series is deemed to be a transferee of the company deemed to exist under subdivision (a)(1).

(4) a protected-series transferable interest of the protected series is deemed to be a transferable interest of the company deemed to exist under subdivision (a)(1).

(5) a protected-series manager is deemed to be a manager of the company deemed to exist under subdivision (a)(1).

(6) an asset of the protected series is deemed to be an asset of the company deemed to exist under subdivision (a)(1), whether or not the asset is an associated asset of the protected series.

(7) any creditor or other obligee of the protected series is deemed to be a creditor or obligee of the company deemed to exist under subdivision (a)(1).

(b) Subsection (a) does not apply if its application would:

(1) contravene § 4-32-404; or

(2) authorize or require the Secretary of State to:

(A) accept for filing a type of record that neither this chapter nor the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., authorizes or requires a person to deliver to the Secretary of State for filing; or

(B) make or deliver a record that neither this chapter nor the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., authorizes or requires the Secretary of State to make or deliver.

History. Acts 2019, No. 665, § 1.

SUBCHAPTER 2 — ESTABLISHING PROTECTED SERIES

SECTION.

4-37-201. Protected series designation — Amendment.

4-37-202. Name.

4-37-203. Registered agent.

4-37-204. Service of process, notice, demand, or other record.

SECTION.

4-37-205. Certificate of good standing for protected series.

4-37-206. Information required in annual report — Effect of failure to provide.

4-37-201. Protected series designation — Amendment.

(a) With the affirmative vote or consent of all members of a limited liability company, the company may establish a protected series.

(b) To establish a protected series, a limited liability company shall deliver to the Secretary of State for filing a protected series designation, signed by the company, stating the name of the company and the name of the protected series to be established.

(c) A protected series is established when the protected series designation takes effect under § 4-32-206.

(d) To amend a protected series designation, a series limited liability company shall deliver to the Secretary of State for filing a statement of designation change, signed by the company, that changes the name of the company, the name of the protected series to which the designation applies, or both. The change takes effect when the statement of designation change takes effect under § 4-32-206.

(e) A record signed by a limited liability company must be signed by a person authorized by the company.

History. Acts 2019, No. 665, § 1.

4-37-202. Name.

(a) Except as otherwise provided in subsection (b), the name of a protected series must comply with § 4-32-103.

(b) The name of a protected series of a series limited liability company must:

(1) begin with the name of the company, including any word or abbreviation required by § 4-32-103; and

(2) contain the phrase “Protected Series” or “protected series” or the abbreviation “P.S.” or “PS”.

(c) If a series limited liability company changes its name, the company shall deliver to the Secretary of State for filing a statement of designation change for each of the company’s protected series, changing the name of each protected series to comply with this section.

History. Acts 2019, No. 665, § 1.

4-37-203. Registered agent.

(a) The registered agent in this state for a series limited liability company is the registered agent in this state for each protected series of the company.

(b) Before delivering a protected series designation to the Secretary of State for filing, a limited liability company shall agree with a registered agent that the agent will serve as the registered agent in this state for both the company and the protected series.

(c) A person that signs a protected series designation delivered to the Secretary of State for filing affirms as a fact that the limited liability

company on whose behalf the designation is delivered has complied with subsection (b).

(d) A person that ceases to be the registered agent for a series limited liability company ceases to be the registered agent for each protected series of the company.

(e) A person that ceases to be the registered agent for a protected series of a series limited liability company, other than as a result of the termination of the protected series, ceases to be the registered agent of the company and any other protected series of the company.

(f) Except as otherwise agreed by a series limited liability company and its registered agent, the agent is not obligated to distinguish between a process, notice, demand, or other record concerning the company and a process, notice, demand, or other record concerning a protected series of the company.

History. Acts 2019, No. 665, § 1.

4-37-204. Service of process, notice, demand, or other record.

(a) A protected series of a series limited liability company may be served with a process, notice, demand, or other record required or permitted by law by:

- (1) serving the company;
- (2) serving the registered agent of the protected series; or
- (3) other means authorized by law of this state other than the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq.

(b) Service of a summons and complaint on a series limited liability company is notice to each protected series of the company of service of the summons and complaint and the contents of the complaint.

(c) Service of a summons and complaint on a protected series of a series limited liability company is notice to the company and any other protected series of the company of service of the summons and complaint and the contents of the complaint.

(d) Service of a summons and complaint on a foreign series limited liability company is notice to each foreign protected series of the foreign company of service of the summons and complaint and the contents of the complaint.

(e) Service of a summons and complaint on a foreign protected series of a foreign series limited liability company is notice to the foreign company and any other foreign protected series of the company of service of the summons and complaint and the contents of the complaint.

(f) Notice to a person under subsection (b), (c), (d), or (e) is effective whether or not the summons and complaint identify the person if the summons and complaint name as a party and identify:

- (1) the series limited liability company or a protected series of the company; or
- (2) the foreign series limited liability company or a foreign protected series of the foreign company.

History. Acts 2019, No. 665, § 1.

4-37-205. Certificate of good standing for protected series.

(a) On request of any person, the Secretary of State shall issue a certificate of good standing for a protected series of a series limited liability company or a certificate of registration for a foreign protected series if:

(1) in the case of a protected series:

(A) no statement of dissolution, termination, or relocation pertaining to the protected series has been filed; and

(B) the company has delivered to the Secretary of State for filing the most recent annual report required by § 26-54-105 and the report includes the name of the protected series, unless:

(i) when the company delivered the report for filing, the protected series designation pertaining to the protected series had not yet taken effect; or

(ii) after the company delivered the report for filing, the company delivered to the Secretary of State for filing a statement of designation change changing the name of the protected series; or

(2) in the case of a foreign protected series, it is registered to do business in this state.

(b) A certificate issued under subsection (a) must state:

(1) in the case of a protected series:

(A) the name of the protected series of the series limited liability company and the name of the company;

(B) that the requirements of subsection (a) are met;

(C) the date the protected series designation pertaining to the protected series took effect; and

(D) if a statement of designation change pertaining to the protected series has been filed, the effective date and contents of the statement;

(2) in the case of a foreign protected series, that it is registered to do business in this state;

(3) that the fees, taxes, interest, and penalties owed to this state by the protected series or foreign protected series and collected through the Secretary of State have been paid, if:

(A) payment is reflected in the records of the Secretary of State; and

(B) nonpayment affects the existence of the protected series; and

(4) other facts reflected in the records of the Secretary of State pertaining to the protected series or foreign protected series which the person requesting the certificate reasonably requests.

(c) Subject to any qualification stated by the Secretary of State in a certificate issued under subsection (a), the certificate may be relied on as conclusive evidence of the facts stated in the certificate.

History. Acts 2019, No. 665, § 1.

4-37-206. Information required in annual report — Effect of failure to provide.

(a) In the annual report required by § 26-54-105, a series limited liability company shall include the name of each protected series of the company:

(1) for which the company has previously delivered to the Secretary of State for filing a protected series designation; and

(2) which has not dissolved and completed winding up.

(b) A failure by a series limited liability company to comply with subsection (a) with regard to a protected series prevents issuance of a certificate of good standing pertaining to the protected series but does not otherwise affect the protected series.

History. Acts 2019, No. 665, § 1.

SUBCHAPTER 3 — ASSOCIATED ASSET; ASSOCIATED MEMBER; PROTECTED-SERIES TRANSFERABLE INTEREST; MANAGEMENT; RIGHT OF INFORMATION**SECTION.**

4-37-301. Associated asset.

4-37-302. Associated member.

4-37-303. Protected-Series transferable interest.

4-37-304. Management.

SECTION.

4-37-305. Right of person not associated member of protected series to information concerning protected series.

4-37-301. Associated asset.

(a) Only an asset of a protected series may be an associated asset of the protected series. Only an asset of a series limited liability company may be an associated asset of the company.

(b) An asset of a protected series of a series limited liability company is an associated asset of the protected series only if the protected series creates and maintains records that state the name of the protected series and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to:

(1) identify the asset and distinguish it from any other asset of the protected series, any asset of the company, and any asset of any other protected series of the company;

(2) determine when and from what person the protected series acquired the asset or how the asset otherwise became an asset of the protected series; and

(3) if the protected series acquired the asset from the company or another protected series of the company, determine any consideration paid, the payor, and the payee.

(c) An asset of a series limited liability company is an associated asset of the company only if the company creates and maintains records that state the name of the company and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to:

(1) identify the asset and distinguish it from any other asset of the company and any asset of any protected series of the company;

(2) determine when and from what person the company acquired the asset or how the asset otherwise became an asset of the company; and

(3) if the company acquired the asset from a protected series of the company, determine any consideration paid, the payor, and the payee.

(d) The records and recordkeeping required by subsections (b) and (c) may be organized by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any asset, or in any other reasonable manner.

(e) To the extent permitted by this section and law of this state other than this chapter, a series limited liability company or protected series of the company may hold an associated asset directly or indirectly, through a representative, nominee, or similar arrangement, except that:

(1) a protected series may not hold an associated asset in the name of the company or another protected series of the company; and

(2) the company may not hold an associated asset in the name of a protected series of the company.

History. Acts 2019, No. 665, § 1.

4-37-302. Associated member.

(a) Only a member of a series limited liability company may be an associated member of a protected series of the company.

(b) A member of a series limited liability company becomes an associated member of a protected series of the company if the operating agreement or a procedure established by the agreement states:

(1) that the member is an associated member of the protected series;

(2) the date on which the member became an associated member; and

(3) any protected-series transferable interest the associated member has in connection with becoming or being an associated member.

(c) If a person that is an associated member of a protected series of a series limited liability company is dissociated from the company, the person ceases to be an associated member of the protected series.

History. Acts 2019, No. 665, § 1.

4-37-303. Protected-Series transferable interest.

(a) A protected-series transferable interest of a protected series of a series limited liability company must be owned initially by an associated member of the protected series or the company.

(b) If a protected series of a series limited liability company has no associated members when established, the company owns the protected-series transferable interests in the protected series.

(c) In addition to acquiring a protected series transferable series interest under subsection (b), a series limited liability company may acquire a series transferable interest through a transfer from another person or as provided in the operating agreement.

(d) Except for § 4-37-108(a)(3), a provision of this chapter which applies to a protected series transferee of a protected series of a series limited liability company applies to the company in its capacity as an owner of a protected-series transferable interest of the protected series. A provision of the operating agreement of a series limited liability company which applies to a protected-series transferee of a protected series of the company applies to the company in its capacity as an owner of a protected-series transferable interest of the protected series.

History. Acts 2019, No. 665, § 1.

4-37-304. Management.

(a) A protected series may have more than one protected-series manager.

(b) If a protected series has no associated members, the series limited liability company is the protected-series manager.

(c) Section 4-37-108 applies to determine any duties of a protected-series manager of a protected series of a series limited liability company to:

- (1) the protected series;
- (2) any associated member of the protected series; and
- (3) any protected-series transferee of the protected series.

(d) Solely by reason of being or acting as a protected-series manager of a protected series of a series limited liability company, a person owes no duty to:

- (1) the company;
- (2) another protected series of the company; or
- (3) another person in that person's capacity as:

(A) a member of the company which is not an associated member of the protected series;

(B) a protected-series transferee or protected-series manager of another protected series; or

(C) a transferee of the company.

(e) An associated member of a protected series of a series limited liability company has the same rights as any other member of the company to vote on or consent to an amendment to the company's operating agreement or any other matter being decided by the members, whether or not the amendment or matter affects the interests of the protected series or the associated member.

(f) Section 4-32-1102 applies to a protected series in accordance with § 4-37-108.

(g) An associated member of a protected series is an agent for the protected series with power to bind the protected series to the same extent that a member of a limited liability company is an agent for the company with power to bind the company under § 4-32-301.

History. Acts 2019, No. 665, § 1.

4-37-305. Right of person not associated member of protected series to information concerning protected series.

(a) A member of a series limited liability company which is not an associated member of a protected series of the company has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that a member that is not a manager of a manager-managed limited liability company has a right to information concerning the company under § 4-32-405(b).

(b) A person formerly an associated member of a protected series has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that a person dissociated as a member of a manager-managed limited liability company has a right to information concerning the company under § 4-32-405(b).

(c) If an associated member of a protected series dies, the legal representative of the deceased associated member has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that the legal representative of a deceased member of a limited liability company has a right to information concerning the company under § 4-32-405(c).

(d) A protected-series manager of a protected series has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that a manager of a manager-managed limited liability company has a right to information concerning the company under § 4-32-405(b).

History. Acts 2019, No. 665, § 1.

SUBCHAPTER 4 — LIMITATION ON LIABILITY AND ENFORCEMENT OF CLAIMS

SECTION.	SECTION.
4-37-401. Limitations on liability.	protected-series trans-
4-37-402. Claim seeking to disregard limitation of liability.	feree.
4-37-403. Remedies of judgment creditor of associated member of	4-37-404. Enforcement against non-asso-
	ciated asset.

4-37-401. Limitations on liability.

(a) A person is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of:

(1) a protected series of a series limited liability company solely by reason of being or acting as:

(A) an associated member, series manager, or protected-series transferee of the protected series; or

(B) a member, manager, or a transferee of the company; or

(2) a series limited liability company solely by reason of being or acting as an associated member, protected-series manager, or protected-series transferee of a protected series of the company.

(b) Subject to § 4-37-404, the following rules apply:

(1) A debt, obligation, or other liability of a series limited liability company is solely the debt, obligation, or liability of the company.

(2) A debt, obligation, or other liability of a protected series is solely the debt, obligation, or liability of the protected series.

(3) A series limited liability company is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of a protected series of the company solely by reason of the protected series being a protected series of the company or the company:

(A) being or acting as a protected-series manager of the protected series;

(B) having the protected series manage the company; or

(C) owning a protected-series transferable interest of the protected series.

(4) A protected series of a series limited liability company is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the company or another protected series of the company solely by reason of:

(A) being a protected series of the company;

(B) being or acting as a manager of the company or a protected-series manager of another protected series of the company; or

(C) having the company or another protected series of the company be or act as a protected-series manager of the protected series.

History. Acts 2019, No. 665, § 1.

4-37-402. Claim seeking to disregard limitation of liability.

(a) Except as otherwise provided in subsection (b), a claim seeking to disregard a limitation in § 4-37-401 is governed by the principles of law and equity, including a principle providing a right to a creditor or holding a person liable for a debt, obligation, or other liability of another person, which would apply if each protected series of a series limited liability company were a limited liability company formed separately from the series limited liability company and distinct from the series limited liability company and any other protected series of the series limited liability company.

(b) The failure of a limited liability company or a protected series to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground to disregard a limitation in § 4-37-401(a) but may be a ground to disregard a limitation in § 4-37-401(b) for monetary damages under § 4-32-404.

(c) This section applies to a claim seeking to disregard a limitation of liability applicable to a foreign series limited liability company or foreign protected series and comparable to a limitation stated in § 4-37-401, if:

(1) the claimant is a resident of this state or doing business or registered to do business in this state; or

(2) the claim is to establish or enforce a liability arising under law of this state other than this chapter or from an act or omission in this state.

History. Acts 2019, No. 665, § 1.

4-37-403. Remedies of judgment creditor of associated member of protected-series transferee.

Section 4-32-705 applies to a judgment creditor of:

(1) an associated member or protected-series transferee of a protected series; or

(2) a series limited liability company, to the extent the company owns a protected-series transferable interest of a protected series.

History. Acts 2019, No. 665, § 1.

4-37-404. Enforcement against non-associated asset.

(a) In this section:

(1) “Enforcement date” means 12:01 a.m. on the date on which a claimant first serves process on a series limited liability company or protected series in an action seeking to enforce under this section a claim against an asset of the company or protected series by attachment, levy, or the like.

(2) Subject to § 4-37-608(b), “incurrence date” means the date on which a series limited liability company or protected series incurred the liability giving rise to a claim that a claimant seeks to enforce under this section.

(b) If a claim against a series limited liability company or a protected series of the company has been reduced to judgment, in addition to any other remedy provided by law or equity, the judgment may be enforced in accordance with the following rules:

(1) A judgment against the company may be enforced against an asset of a protected series of the company if the asset:

(A) was a non-associated asset of the protected series on the incurrence date; or

(B) is a non-associated asset of the protected series on the enforcement date.

(2) A judgment against a protected series may be enforced against an asset of the company if the asset:

(A) was a non-associated asset of the company on the incurrence date; or

(B) is a non-associated asset of the company on the enforcement date.

(3) A judgment against a protected series may be enforced against an asset of another protected series of the company if the asset:

(A) was a non-associated asset of the other protected series on the incurrence date; or

(B) is a non-associated asset of the other protected series on the enforcement date.

(c) In addition to any other remedy provided by law or equity, if a claim against a series limited liability company or a protected series has not been reduced to a judgment and law other than this chapter permits a prejudgment remedy by attachment, levy, or the like, the court may apply subsection (b) as a prejudgment remedy.

(d) In a proceeding under this section, the party asserting that an asset is or was an associated asset of a series limited liability company or a protected series of the company has the burden of proof on the issue.

(e) This section applies to an asset of a foreign series limited liability company or foreign protected series if:

- (1) the asset is real or tangible property located in this state;
- (2) the claimant is a resident of this state or doing business or registered to do business in this state, or the claim under § 4-37-404 is to enforce a judgment, or to seek a prejudgment remedy, pertaining to a liability arising from law of this state other than this chapter or an act or omission in this state; and
- (3) the asset is not identified in the records of the foreign series limited liability company or foreign protected series in a manner comparable to the manner required by § 4-37-301.

History. Acts 2019, No. 665, § 1.

SUBCHAPTER 5 — DISSOLUTION AND WINDING UP OF PROTECTED SERIES

SECTION.

4-37-501. Events causing dissolution of protected series.

4-37-502. Winding up dissolved protected series.

SECTION.

4-37-503. Effect of reinstatement of series limited liability company or revocation of voluntary dissolution.

4-37-501. Events causing dissolution of protected series.

A protected series of a series limited liability company is dissolved, and its activities and affairs must be wound up, only on the:

- (1) dissolution of the company;
- (2) occurrence of an event or circumstance the operating agreement states causes dissolution of the protected series;
- (3) affirmative vote or consent of all members; or
- (4) entry by the court of an order dissolving the protected series on application by an associated member or protected-series manager of the protected series:
 - (A) in accordance with § 4-37-108; and
 - (B) to the same extent, in the same manner, and on the same grounds the court would enter an order dissolving a limited liability company on application by a member or manager of the company; or
- (5) entry by the court of an order dissolving the protected series on application by the company or a member of the company on the ground

that the conduct of all or substantially all the activities and affairs of the protected series is illegal.

History. Acts 2019, No. 665, § 1.

4-37-502. Winding up dissolved protected series.

(a) Subject to subsections (b) and (c) and in accordance with § 4-37-108:

(1) a dissolved protected series shall wind up its activities and affairs in the same manner that a limited liability company winds up its activities and affairs under § 4-32-903, subject to the same requirements and conditions and with the same effects; and

(2) judicial supervision or another judicial remedy is available in the winding up of the protected series to the same extent, in the same manner, under the same conditions, and with the same effects that apply under § 4-32-902.

(b) When a protected series of a series limited liability company dissolves, the company may deliver to the Secretary of State for filing a statement of protected series dissolution stating the name of the company and the protected series and that the protected series is dissolved. The filing of the statement by the Secretary of State has the same effect as the filing by the Secretary of State of a statement of dissolution under § 4-32-906.

(c) When a protected series of a series limited liability company has completed winding up, the company may deliver to the Secretary of State for filing a statement of designation cancellation stating the name of the company and the protected series and that the protected series is terminated. The filing of the statement by the Secretary of State has the same effect as the filing by the Secretary of State of a statement of termination under § 4-32-906.

(d) A series limited liability company has not completed its winding up until each of the protected series of the company has completed its winding up.

History. Acts 2019, No. 665, § 1.

4-37-503. Effect of reinstatement of series limited liability company or revocation of voluntary dissolution.

If a series limited liability company that has been administratively dissolved is reinstated, or a series limited liability company that voluntarily dissolved rescinds its dissolution:

(1) each protected series of the company ceases winding up; and

(2) section 4-32-203 applies to each protected series of the company in accordance with § 4-37-108.

History. Acts 2019, No. 665, § 1.

SUBCHAPTER 6 — ENTITY TRANSACTIONS RESTRICTED

SECTION.

4-37-601. Definitions.

4-37-602. Protected series may not be party to entity transaction.

4-37-603. Restriction on entity transaction involving protected series.

SECTION.

4-37-604. Merger authorized — Parties restricted.

4-37-605. Plan of merger.

4-37-606. Statement of merger.

4-37-607. Effect of merger.

4-37-608. Application of § 4-37-404 after merger.

4-37-601. Definitions.

In this subchapter:

(1) “After a merger” or “after the merger” means when a merger under § 4-37-604 becomes effective and afterwards.

(2) “Before a merger” or “before the merger” means before a merger under § 4-37-604 becomes effective.

(3) “Continuing protected series” means a protected series of a surviving company which continues in uninterrupted existence after a merger under § 4-37-604.

(4) “Merging company” means a limited liability company that is party to a merger under § 4-37-604.

(5) “Non-surviving company” means a merging company that does not continue in existence after a merger under § 4-37-604.

(6) “Relocated protected series” means a protected series of a non-surviving company which, after a merger under § 4-37-604, continues in uninterrupted existence as a protected series of the surviving company.

(7) “Surviving company” means a merging company that continues in existence after a merger under § 4-37-604.

History. Acts 2019, No. 665, § 1.

4-37-602. Protected series may not be party to entity transaction.

A protected series may not:

(1) be an acquiring, acquired, converting, converted, merging, or surviving entity;

(2) participate in a domestication; or

(3) be a party to or be formed, organized, established, or created in a transaction substantially like a merger, interest exchange, conversion, or domestication.

History. Acts 2019, No. 665, § 1.

4-37-603. Restriction on entity transaction involving protected series.

A series limited liability company may not be:

- (1) an acquiring, acquired, converting, converted, domesticating, or domesticated entity; or
- (2) except as otherwise provided in § 4-37-604, a party to or the surviving company of a merger.

History. Acts 2019, No. 665, § 1.

4-37-604. Merger authorized — Parties restricted.

A series limited liability company may be party to a merger in accordance with § 4-32-1206, this section, and § 4-37-605 through 4-37-608 only if:

- (1) each other party to the merger is a domestic limited liability company; and
- (2) the surviving company is not created in the merger.

History. Acts 2019, No. 665, § 1.

4-37-605. Plan of merger.

In a merger under § 4-37-604, the plan of merger must:

- (1) comply with § 4-32-1206; and
- (2) state in a record:

- (A) for any protected series of a non-surviving company, whether after the merger the protected series will be a relocated protected series or be dissolved, wound up, and terminated;

- (B) for any protected series of the surviving company which exists before the merger, whether after the merger the protected series will be a continuing protected series or be dissolved, wound up, and terminated;

- (C) for each relocated protected series or continuing protected series:

- (i) the name of any person that becomes an associated member or protected-series transferee of the protected series after the merger, any consideration to be paid by, on behalf of, or in respect of the person, the name of the payor, and the name of the payee;

- (ii) the name of any person whose rights or obligations in the person's capacity as an associated member or protected-series transferee will change after the merger;

- (iii) any consideration to be paid to a person who before the merger was an associated member or protected-series transferee of the protected series and the name of the payor; and

- (iv) if after the merger the protected series will be a relocated protected series, its new name;

- (D) for any protected series to be established by the surviving company as a result of the merger:

- (i) the name of the protected series;

- (ii) any protected-series transferable interest to be owned by the surviving company when the protected series is established; and

(iii) the name of and any protected-series transferable interest owned by any person that will be an associated member of the protected series when the protected series is established; and

(E) for any person that is an associated member of a relocated protected series and will remain a member after the merger, any amendment to the operating agreement of the surviving company which:

(1) is or is proposed to be in a record; and

(2) is necessary or appropriate to state the rights and obligations of the person as a member of the surviving company.

History. Acts 2019, No. 665, § 1.

4-37-606. Statement of merger.

In a merger under § 4-37-604, the statement of merger must:

(1) comply with § 4-32-1208; and

(2) include as an attachment the following records, each to become effective when the merger becomes effective:

(A) for a protected series of a merging company being terminated as a result of the merger, a statement of termination signed by the company;

(B) for a protected series of a non-surviving company which after the merger will be a relocated protected series:

(i) a statement of relocation signed by the non-surviving company which contains the name of the company and the name of the protected series before and after the merger; and

(ii) a statement of protected series designation signed by the surviving company; and

(C) for a protected series being established by the surviving company as a result of the merger, a statement of designation signed by the company.

History. Acts 2019, No. 665, § 1.

4-37-607. Effect of merger.

When a merger under § 4-37-604 becomes effective, in addition to the effects stated in § 4-32-1209:

(1) as provided in the plan of merger, each protected series of each merging company which was established before the merger:

(A) is a relocated protected series or continuing protected series; or

(B) is dissolved, wound up, and terminated;

(2) any protected series to be established as a result of the merger is established;

(3) any relocated protected series or continuing protected series is the same person without interruption as it was before the merger;

(4) all property of a relocated protected series or continuing protected series continues to be vested in the protected series without transfer, reversion, or impairment;

(5) all debts, obligations, and other liabilities of a relocated protected series or continuing protected series continue as debts, obligations, and other liabilities of the protected series;

(6) except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of a relocated protected series or continuing protected series remain in the protected series;

(7) the new name of a relocated protected series may be substituted for the former name of the protected series in any pending action or proceeding;

(8) if provided in the plan of merger:

(A) a person becomes an associated member or protected-series transferee of a relocated protected series or continuing protected series;

(B) a person becomes an associated member of a protected series established by the surviving company as a result of the merger;

(C) any change in the rights or obligations of a person in the person's capacity as an associated member or protected-series transferee of a relocated protected series or continuing protected series take effect; and

(D) any consideration to be paid to a person that before the merger was an associated member or protected-series transferee of a relocated protected series or continuing protected series is due; and

(9) any person that is a member of a relocated protected series becomes a member of the surviving company, if not already a member.

History. Acts 2019, No. 665, § 1.

4-37-608. Application of § 4-37-404 after merger.

(a) A creditor's right that existed under § 4-37-404 immediately before a merger under § 4-37-604 may be enforced after the merger in accordance with the following rules:

(1) A creditor's right that existed immediately before the merger against the surviving company, a continuing protected series, or a relocated protected series continues without change after the merger.

(2) A creditor's right that existed immediately before the merger against a nonsurviving company:

(A) may be asserted against an asset of the non-surviving company which vested in the surviving company as a result of the merger; and

(B) does not otherwise change.

(3) Subject to subsection (b), the following rules apply:

(A) In addition to the remedy stated in subdivision (a)(1), a creditor with a right under § 4-37-404 which existed immediately before the merger against a non-surviving company or a relocated protected series may assert the right against:

(i) an asset of the surviving company, other than an asset of the non-surviving company which vested in the surviving company as a result of the merger;

- (ii) an asset of a continuing protected series; or
- (iii) an asset of a protected series established by the surviving company as a result of the merger;
- (iv) if the creditor's right was against an asset of the non-surviving company, an asset of a relocated series; or
- (v) if the creditor's right was against an asset of a relocated protected series, an asset of another relocated protected series.

(B) In addition to the remedy stated in subdivision (a)(2), a creditor with a right that existed immediately before the merger against the surviving company or a continuing protected series may assert the right against:

- (i) an asset of a relocated protected series; or
- (ii) an asset of a non-surviving company which vested in the surviving company as a result of the merger.

(b) For the purposes of subdivision (a)(3) and § 4-37-404(b)(1)(A), § 4-37-404(b)(2)(A), and § 4-37-404(b)(3)(A), the incurrence date is deemed be the date on which the merger becomes effective.

(c) A merger under § 4-37-604 does not affect the manner in which § 4-37-404 applies to a liability incurred after the merger.

History. Acts 2019, No. 665, § 1.

SUBCHAPTER 7 — FOREIGN PROTECTED SERIES

SECTION.

4-37-701. Governing law.

4-37-702. No attribution of activities constituting doing business or for establishing jurisdiction.

4-37-703. Registration of foreign protected series.

SECTION.

4-37-704. Disclosure required when foreign series limited liability company or foreign protected series party to proceeding.

4-37-701. Governing law.

The law of the jurisdiction of formation of a foreign series limited liability company governs:

(1) the internal affairs of a foreign protected series of the company, including:

- (A) relations among any associated members of the foreign protected series;
- (B) relations between the foreign protected series and:
 - (i) any associated member;
 - (ii) the protected-series manager; or
 - (iii) any protected-series transferee;
- (C) relations between any associated member and:
 - (i) the protected-series manager;
 - (ii) any protected-series transferee;
- (D) the rights and duties of a protected-series manager;

(E) governance decisions affecting the activities and affairs of the foreign protected series and the conduct of those activities and affairs; and

(F) procedures and conditions for becoming an associated member or protected-series transferee;

(2) relations between the foreign protected series and:

(A) the company;

(B) another foreign protected series of the company;

(C) a member of the company which is not an associated member of the foreign protected series;

(D) a foreign protected-series manager that is not a protected-series manager of the protected series;

(E) a foreign protected-series transferee that is not a foreign protected-series transferee of the protected series; and

(F) a transferee of a transferable interest of the company;

(3) except as otherwise provided in § 4-37-402 and § 4-37-404, the liability of a person for a debt, obligation, or other liability of a foreign protected series of a foreign series limited liability company if the debt, obligation, or liability is asserted solely by reason of the person being or acting as:

(A) an associated member, protected-series transferee, or protected-series manager of the foreign protected series;

(B) a member of the company which is not an associated member of the foreign protected series;

(C) a protected-series manager of another foreign protected series of the company;

(D) a protected-series transferee of another foreign protected series of the company;

(E) a manager of the company; or

(F) a transferee of a transferable interest of the company; and

(4) except as otherwise provided in § 4-37-402 and § 4-37-404:

(A) the liability of the foreign series limited liability company for a debt, obligation, or other liability of a foreign protected series of the company if the debt, obligation, or liability is asserted solely by reason of the foreign protected series being a foreign protected series of the company or the company:

(i) being or acting as a foreign protected-series manager of the foreign protected series;

(ii) having the foreign protected series manage the company; or

(iii) owning a protected-series transferable interest of the foreign protected series; and

(B) the liability of a foreign protected series for a debt, obligation, or other liability of the company or another foreign protected series of the company if the debt, obligation, or liability is asserted solely by reason of the foreign protected series:

(i) being a foreign protected series of the company or having the company or another foreign protected series of the company be or act as foreign protected-series manager of the foreign protected series; or

(ii) managing the company or being or acting as a foreign protected-series manager of another foreign protected series of the company.

History. Acts 2019, No. 665, § 1.

4-37-702. No attribution of activities constituting doing business or for establishing jurisdiction.

In determining whether a foreign series limited liability company or foreign protected series of the company does business in this state or is subject to the personal jurisdiction of the courts of this state:

(1) the activities and affairs of the company are not attributable to a foreign protected series of the company solely by reason of the foreign protected series being a foreign protected series of the company; and

(2) the activities and affairs of a foreign protected series are not attributable to the company or another foreign protected series of the company solely by reason of the foreign protected series being a foreign protected series of the company.

History. Acts 2019, No. 665, § 1.

4-37-703. Registration of foreign protected series.

(a) Except as otherwise provided in this section and subject to § 4-37-402 and § 4-37-404, the law of this state governing the registration of a foreign limited liability company to do business in this state, including the consequences of not complying with that law, applies to a foreign protected series of a foreign series limited liability company as if the foreign protected series were a foreign limited liability company formed separately from the foreign series limited liability company and distinct from the foreign series limited liability company and any other foreign protected series of the foreign series limited liability company.

(b) An application by a foreign protected series of a foreign series limited liability company for registration to do business in this state must include:

(1) the name and jurisdiction of formation of the foreign series limited liability company; and

(2) if the company has other foreign protected series, the name and street and mailing address of an individual who knows the name and street and mailing address of:

(A) each other foreign protected series of the foreign series limited liability company; and

(B) the foreign protected-series manager of and agent for service of process for each other foreign protected series of the foreign series limited liability company.

(c) The name of a foreign protected series applying for registration or registered to do business in this state must comply with § 4-37-202 and may do so using § 4-32-108, if the fictitious name complies with § 4-37-202.

(d) The requirement in § 4-32-1309 to amend a statement of registration to update information applies to the information required by subsection (b).

History. Acts 2019, No. 665, § 1.

4-37-704. Disclosure required when foreign series limited liability company or foreign protected series party to proceeding.

(a) Not later than 30 days after becoming a party to a proceeding before a civil, administrative, or other adjudicative tribunal of or located in this state or a tribunal of the United States located in this state:

(1) a foreign series limited liability company shall disclose to each other party the name and street and mailing address of:

(A) each foreign protected series of the company; and

(B) each foreign protected-series manager of and a registered agent for service of process for each foreign protected series of the company; and

(2) a foreign protected series of a foreign series limited liability company shall disclose to each other party the name and street and mailing address of:

(A) the company and each manager of the company and an agent for service of process for the company; and

(B) any other foreign protected series of the company and each foreign protected-series manager of and an agent for service of process for the other foreign protected series.

(b) If a foreign series limited liability company or foreign protected series challenges the personal jurisdiction of the tribunal, the requirement that the foreign company or foreign protected series make disclosure under subsection (a) is tolled until the tribunal determines whether it has personal jurisdiction.

(c) If a foreign series limited liability company or foreign protected series does not comply with subsection (a), a party to the proceeding may:

(1) request the tribunal to treat the noncompliance as a failure to comply with the tribunal's discovery rules; or

(2) bring a separate proceeding in the court to enforce subsection (a).

History. Acts 2019, No. 665, § 1.

SUBCHAPTER 8 — MISCELLANEOUS PROVISIONS

SECTION.

4-37-801. Uniformity of application and construction.

4-37-802. Relation to Electronic Signatures in Global and National Commerce Act.

SECTION.

4-37-803. Transitional provisions.

4-37-804. Savings clause.

4-37-805. Effective date.

4-37-801. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History. Acts 2019, No. 665, § 1.

4-37-802. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

History. Acts 2019, No. 665, § 1.

4-37-803. Transitional provisions.

(a) Before January 1, 2020, this chapter governs only:

(1) a series limited liability company formed, or a protected series established, on or after October 1, 2019; and

(2) a limited liability company that is a series limited liability company before October 1, 2019, and elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this chapter.

(b) If a series limited liability company elects under subdivision (a)(2) to be subject to this chapter:

(1) the election applies to each protected series of the company, whenever established; and

(2) a manager of the company has the right to sign and deliver to the Secretary of State for filing any record necessary to comply with this chapter, whether the record pertains to the company, a protected series of the company, or both.

(c) On and after January 1, 2020, this chapter governs all series limited liability companies and protected series.

(d) Until October 1, 2020, § 4-37-402 and § 4-37-404 do not apply to a foreign protected series that was established before October 1, 2019, or a foreign limited liability company that became a foreign series limited liability company before October 1, 2019.

History. Acts 2019, No. 665, § 1.

4-37-804. Savings clause.

This chapter does not affect an action commenced, proceeding brought, or right accrued before October 1, 2019.

History. Acts 2019, No. 665, § 1.

4-37-805. Effective date.

This chapter takes effect on October 1, 2019.

History. Acts 2019, No. 665, § 1.

CHAPTERS 38-40

[Reserved.]

